

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

EAUX HOLDINGS, LLC	*	Docket No. 2:20-cv-1582
	*	
	*	
VERSUS	*	March 9, 2022
	*	
	*	
SCOTTSDALE INSURANCE CO.	*	Lafayette, Louisiana

OFFICIAL TRANSCRIPT OF JURY TRIAL DAY 3 OF 4
BEFORE THE HONORABLE JAMES D. CAIN, JR.,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: SOMER GEORGE BROWN
MICHAEL K. COX
Cox, Cox, Filo, Camel & Wilson
723 Broad Street
Lake Charles, Louisiana 70601

FOR THE DEFENDANT: JOHN POWERS WOLFF, II
MARY ANNE WOLF
CHELSEA ACOSTA PAYNE
FABIAN EDWARDS
Keogh, Cox & Wilson
P.O. Box 1151
Baton Rouge, LA 70821

REPORTED BY: DEIDRE D. JURANKA, CRR
USDC - Western District of LA
P.O. Box 13271
Lake Charles, LA 70612

Deidre D. Juranka, CRR
United States Court Reporter
Western District of Louisiana

I N D E X

	PAGE
COURT PROCEEDINGS.....	309
JOSEPH NEIL ODOM	
DIRECT EXAMINATION BY MR. COX.....	309
CROSS-EXAMINATION BY MR. WOLFF.....	353
REDIRECT EXAMINATION BY MR. COX.....	435
GRANGER ALLEN STUCK	
DIRECT EXAMINATION BY MS. WOLF.....	450

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT PROCEEDINGS

THE COURT: Before we bring the jury in, anything we need to discuss, any housekeeping?

MR. COX: No, Your Honor.

THE COURT: Very good. Then we'll bring the jury in. Mr. Cox, is this your last witness?

MR. COX: Yes, sir.

THE COURT: Mr. Wolff, you'll be ready to call a witness?

MR. WOLFF: Yes, Your Honor.

THE COURT: Okay. Great.

(Jury enters courtroom.)

THE COURT: Okay. Good morning, ladies and gentlemen. I hope everyone had a good evening, safe travels. They have coffee for y'all in there in the morning? Very good. Lisa, I shouldn't even ask. They're ahead of me always. I have a great staff.

Okay. Mr. Cox, you may call your next witness.

MR. COX: Thank you, Your Honor. I call Joey Odom to the stand.

JOSEPH NEIL ODOM,

after being first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, did testify on oath as follows:

DIRECT EXAMINATION

1 BY MR. COX:

2 Q. Morning, Joey.

3 A. Good morning.

4 Q. What's your full name?

5 A. Joseph Neil Odom.

6 Q. And you're from Lake Charles?

7 A. Yes, sir.

8 Q. Are you married?

9 A. Yes, sir.

10 Q. Who's your wife? She's here, correct?

11 A. Lydia Leblanc Odom. I've been married for over 36
12 years.

13 Q. Do y'all have any children?

14 A. Yes, sir.

15 Q. How many?

16 A. I have two. Daniel's 35. Blake is 27.

17 Q. What's your age?

18 A. 61.

19 Q. Can you tell the jury a little bit about your
20 background, your work experience, and your education?

21 A. Yes, sir. I grew up in Vicksburg, Mississippi. I
22 started working with my dad at 13, construction, digging
23 ditches, footings. I realized my highlight of the day was
24 lunch. That was tough. So my mom worked for the recreation
25 department so I got into recreation about age 14, keeping

1 score, umpiring, working on weekends and nights. Always had
2 various jobs through the recreation department up until I
3 graduated high school and I went off to college. Had various
4 jobs there. Worked for the intramural departments in
5 colleges. At one point, when I came back home, my parents
6 moved to Monroe, which is actually where I was born. When I
7 was going to school I had a summer job that I actually worked
8 on for the City of West Monroe on the back of a garbage
9 truck, which was pretty interesting.

10 I always worked, until I graduated, various jobs,
11 usually with universities and umpiring and doing things on
12 the weekend, hosting tournaments, which ultimately became my
13 profession and how I make a living today. During that time I
14 became involved with United States Slow Pitch Softball
15 Association which is now Specialty Sports Association. This
16 is my 40th year with them. I found that's a place where I
17 could achieve what I love to do. I don't consider it work.
18 It's fun to get up every day and do what I do. I feel very
19 fortunate.

20 Then I got a job working for the parish -- the
21 Recreation Park Commission for the Parish of East Baton Rouge
22 where I was accepted down there. They're a top recreation
23 department in the country, win national awards. So I was
24 very fortunate to have ten years with them. The experience I
25 got there catapulted me into a position. The City of

1 Carencro offered me the director of recreation. I was there
2 very briefly when the mayor of Lake Charles contacted me and
3 said, "Hey, we want you to come grow our recreation
4 department, particularly with the weekend events." They'd
5 built a complex. So I went there.

6 At that same year USSSA, which is acronym for United
7 States Specialty Sports Association, I was able to -- lost my
8 train of thought. That's where I started with them, doing
9 USSSA. Then that year that I started with the city we
10 introduced baseball into the association. Slow pitch
11 softball was kind of going down so we had to do something.
12 It was kind of to generate revenue. Low and behold, it
13 became the largest baseball association in the country after
14 about three years. So I was working for the city and I was
15 doing this. USSSA stuff was always on the side, weekends,
16 and evenings. And I was overloaded so I quit the public
17 sector at that point, when I was working for Lake Charles,
18 and went into the private sector. It was a big jump, had
19 benefits, vehicle. It was pretty good pay. So I was very
20 nervous, but I look back and it was a good move. And from
21 there, I have been doing this since.

22 When I was with the BREC I became a -- through the
23 National Recreation and Park Association, I was involved with
24 LRPA, Louisiana Recreation and Park Association. I've been
25 with them for about 37 years, and I became certified through

1 the NRPA. I have continuing education, ten hours a year
2 continuing education. I've kept that up this entire time.
3 Since I left the city, this is what I've been doing. My real
4 job is the weekend events and the sports part of the
5 administration of USSSA.

6 Q. You said you went to college. Did you get a
7 degree?

8 A. Oh, yes, sir. I graduated in -- well, I met Lydia
9 in college at Northeast Louisiana University and got married
10 in 1985, before I got my degree. The next year, going to
11 night class and continuing work, I was able to -- I got my
12 degree, bachelor of science.

13 Q. In addition to all the things you've done with
14 recreation and softball, you've also dabbled in real estate,
15 correct?

16 A. Yes, sir.

17 Q. When did you start doing that?

18 A. Well, I realized when -- I bought my first house in
19 West Monroe, Louisiana, Lydia and I did, for \$17,000, was my
20 first house, little 900 square foot house. When I got the
21 job in Baton Rouge I got a house down there for 35,000 and
22 then when I sold my house -- no, it was 55,000. When I sold
23 my house in West Monroe I sold it for 35,000. I was like,
24 man, that's a pretty good deal. That kind of intrigued me to
25 continue doing that. I bought little pieces of property here

1 and there and I found out that property is usually a pretty
2 good investment, land. So I started what I --
3 unintentionally, but that's when I got into it.

4 Q. One of the things that you did, you formed LLC's to
5 do your property deals, correct?

6 A. Yes, sir.

7 Q. Something your attorney told you is smart?

8 A. Absolutely.

9 Q. One -- two of the LLC's that you -- do you own
10 Four-0, LLC?

11 A. Yes, sir.

12 Q. Do you own Eaux Holdings, LLC?

13 A. Yes, sir.

14 Q. And you're the only owner of both of those,
15 correct?

16 A. Yes, sir.

17 Q. And those are the companies that we've talked
18 about. Eaux Holdings is the company that owns the building
19 at 620 Esplanade that is the subject of this case; is that
20 correct?

21 A. You said Eaux Holdings?

22 Q. Yes.

23 A. Yes, sir.

24 MR. COX: Exhibit 115, I'd like to offer, a
25 photograph of the building.

1 MR. WOLFF: No objection.

2 THE COURT: It'll be admitted.

3 BY MR. COX:

4 Q. Joey, this is what the building looked like before
5 Hurricane Laura, correct?

6 A. Yes, sir.

7 Q. About 14,000 square feet?

8 A. Yes, sir.

9 Q. And it housed the Department of Homeland Security,
10 ICE, on the bottom floor, correct?

11 A. Yes, sir.

12 Q. What'd you purchase that building for?

13 A. \$2 million.

14 Q. And when did you purchase it?

15 A. January of 2018.

16 Q. How much money did you have to borrow to purchase
17 it?

18 A. 100 percent of it, \$2 million.

19 Q. Did you say January 2018?

20 A. Yes, sir.

21 Q. Okay. So about two and a half years before
22 Hurricane Laura hit Lake Charles?

23 A. Yes, sir.

24 Q. How'd this stack up with the real estate
25 investments that you'd made before that time?

1 A. It was nerve-racking. I knew Fred Book, who owned
2 that building. I actually -- my first office when I moved
3 out of my house, moved my office out of my house to get a
4 real office, was in this building. I had a little corner
5 office downstairs. Fred had it sectioned up. So I got to
6 know Fred. And through him, then I bought a piece of
7 property next to him. And he saw me out there one day
8 looking at the property with, I think, a surveyor or
9 engineer, somebody, and he asked me what I was doing and
10 said, "Hey, why don't you look at this." And I considered
11 moving into that building. Anyway, I ended up buying the
12 building. I made a commitment to Fred that I would. It was
13 very nerve-racking to put my signature on \$2 million, but
14 Fred talked me through it. He's getting up there in age and
15 he said, "It's a good investment and it can be good towards
16 your family's retirement, you know. I mean, when you get to
17 that point, it's a good income."

18 Q. Had you ever made an investment that big?

19 A. Never.

20 Q. Did you get insurance on the building?

21 A. Yes, sir.

22 Q. With whom?

23 A. Scottsdale.

24 Q. After you got insurance, did you pay your premiums
25 on time?

1 A. Yes, sir.

2 Q. Did you pay the full premium on time?

3 A. I believe I paid the full premium every single time
4 and I don't believe I was ever late.

5 Q. Why'd you do that? Why'd you pay the premiums on
6 time?

7 A. Because to protect that \$2 million investment. No
8 way I could handle repairs or devastation like this if I
9 didn't have it.

10 Q. We all know Hurricane Laura hit Lake Charles
11 August 27th, 2020. What did you do to prepare for this
12 storm?

13 A. I watched it right up, like everybody did, to see,
14 oh, it's not coming here, not coming here. They say it's
15 coming here so it's not. Well, they got it right. It did
16 come to our area, and I sent my family ahead of me to
17 Arkansas. My son and myself stayed back to just batten down
18 the hatches, so they say, turn the gas off, put any lawn
19 chairs inside, any patio furniture, and just got the best I
20 could get it ready for high winds. And then we evacuated, as
21 my family, my grandkids, my daughter-in-law, my son, my wife,
22 to Arkansas.

23 Q. When did you come back to Lake Charles?

24 A. I came back the next day, as soon as I thought it
25 was safe to come back.

1 Q. Did anyone come with you?

2 A. Sir?

3 Q. Did anyone come with you back to Lake Charles?

4 A. Yes, sir, my son came back with me.

5 Q. Why'd you come back so early?

6 A. I was concerned about my property and my house, all
7 my properties.

8 Q. Including the building at 620 Esplanade?

9 A. Yes, sir.

10 Q. And you were concerned. You wanted to look at it.
11 Anything else?

12 A. I wanted to get back and be able to do what I could
13 to see what the damage was and try to see if I needed to do
14 anything else to protect my property.

15 Q. When you got back to Lake Charles did you have any
16 trouble getting around town?

17 A. Yes, sir.

18 Q. What kind of stuff did you see when you got back to
19 town?

20 A. Well, starting when I came back from just south of
21 Monroe I started seeing the devastation; and it was
22 surprising it was that far north. I called my family and I
23 told them, "Hey, don't come back this way. Electricity's
24 out. Nobody's open." So I told them -- they were going to
25 Lafayette to my -- to her sister's house, is where they ended

1 up going after they realized it hit Lake Charles, to her
2 sister's house. I told them to go around through Natchez and
3 that way, go around all this. When I got back, more I come
4 down 165, it was getting worse and worse.

5 Q. When you hit Lake Charles were the streets open and
6 accessible?

7 A. (Shakes head side to side.)

8 Q. Were power lines down?

9 A. (Nods head up and down.)

10 Q. Did you see a bunch of buildings that were damaged?

11 A. (Nods head up and down.)

12 MR. COX: I'd like to offer Exhibits 90 and 93, the
13 photos of Lake Charles damages.

14 MR. WOLFF: I think we already dealt with that,
15 Your Honor, to know.

16 THE COURT: Which one is it?

17 MR. COX: It's the one with the photos of Lake
18 Charles, downed power lines, etc.

19 THE COURT: We didn't deal with it. We talked
20 about it.

21 MR. WOLFF: Right. He's already testified. The
22 building is what's relevant here. Everybody knows it
23 was devastated.

24 THE COURT: That's why I'm going to let him show it
25 because I think everybody knows. I'm going to overrule

1 your objection.

2 MR. COX: Thank you, Your Honor.

3 THE COURT: It's for demonstrative purposes,
4 really.

5 BY MR. COX:

6 Q. Joey, the photos up here show a bunch of things.
7 They show the Calcasieu Marine building. You saw that with
8 the windows blown out, correct?

9 A. Yes, sir.

10 Q. You saw a riverboat crashed into Interstate 10
11 bridge --

12 A. Yes, sir.

13 Q. -- downed power lines, trees on houses, roofs blown
14 off, devastation to some homes, correct?

15 A. Yes, sir. When I -- once I hit 20 off of 160,
16 whew.

17 Q. Let's talk about your building at 620 Esplanade.
18 We've already put into evidence Exhibits 70 to 81. I'm going
19 to show you photographs of your building after the storm.
20 There's been some testimony about what was damaged. When you
21 got back, just tell the jury briefly the condition of the
22 building, what you saw.

23 A. I walked up to the building. There was -- ICE was
24 there, Homeland Security. They were securing their stuff.
25 They have a lot of confidential stuff. There was water

1 immediately when you walk into the lobby. The lobby had
2 water standing in it. Saw busted out windows. As I entered
3 I see the roof falling in, a lot of water inside. When I
4 went in and went upstairs I saw the -- clearly saw the sky
5 through the top floor. It was kind of numbing. Like, I
6 think it was like a dream; but it was -- I don't even know
7 how to describe it. Shock, I guess.

8 Q. The roof was gaping holes and open and rainwater
9 was coming into the building?

10 A. Yes, sir, in several places.

11 Q. Did you do anything in response to that to try to
12 get a temporary roof on?

13 A. Immediately Crest Roof found me. They were in the
14 area, and I negotiated with them and they immediately started
15 putting a temp roof on.

16 Q. Did you also try to do something to secure the rest
17 of the building and dry the place out as best you could?

18 A. Yes, sir. I contracted with All Clear Restoration
19 and they told me what they would do. You know, I found Jeff,
20 was one of the first people, and he was very helpful in
21 giving me suggestions on what I may need to do. And I
22 contracted with All Clear to close in all the windows, dry it
23 out, pull out any Sheetrock after they did the moisture map.
24 And so yes, sir, that's what I did.

25 Q. So in the days and weeks that followed Hurricane

1 Laura there was more rain in Lake Charles, especially when
2 Delta came in, correct?

3 A. Yes, sir.

4 Q. And Delta, it rained over 20 inches in a day. Did
5 that temporary roof that Crest put on do a perfect job?

6 A. No, sir.

7 Q. What did you do to protect your building, if
8 anything, because there was still some water coming through
9 the roof?

10 A. Well, it's a flat roof so the challenge was you
11 couldn't just cover the roof up because then everything --
12 the water would sit on the roof. So you had to tie it into
13 the drain somehow, which was the challenge. There was so
14 much water it was finding its way in. My son and I with some
15 of his buddies -- he, my son, actually came up with the idea
16 to build these vats out of PVC and Visquine. First we
17 started with buckets, just Tupperware buckets, I say the big
18 buckets, the husky buckets, anything we could find to catch
19 it because it was dripping. Then it start raining. You
20 could tell the water was backing up somehow or getting in
21 more because it was coming in. We built these vats. Went to
22 Home Depot and I bought a bunch of sump pumps and hoses and
23 fans. And we put the fans out because, I mean, we'd already
24 got it -- was getting it cleared up downstairs. I didn't
25 want to have to go through that again, which I think would

1 have been another huge additional cost for me. And we hooked
2 the vats up with the sump pumps to eventually go out the
3 window. And we -- actually, when it was raining at night, we
4 spent the night there to make sure -- I'd get up every hour
5 and go check it, make sure everything's working.

6 MR. COX: Like to offer Exhibits 82 through 86, the
7 PVC vats.

8 MS. WOLF: No objection.

9 THE COURT: It'll be admitted.

10 BY MR. COX:

11 Q. Mr. Odom, were these the giant containers that you
12 and your son built to collect the rainwater that was still
13 coming through the temporary roof and pump it out the
14 building?

15 A. Yes, sir.

16 Q. Okay. And you have buckets in the photos, too.
17 Are those the buckets that you guys used throughout the
18 building to collect the rainwater?

19 A. Yes, sir.

20 Q. And you did this sometimes around the clock?

21 A. Yes, sir.

22 Q. There's been some talk about Jeff Major and Skyline
23 Adjusters, and he said he how got over there. The next --
24 the day after the storm you hired Mr. Major as your public
25 adjuster, correct?

1 A. Yes, sir.

2 Q. And you signed a contract with him?

3 A. Yes, sir.

4 Q. And the contract, which they've already gone over,
5 was for an hourly rate but no more than 10 percent of what
6 you collected in insurance, correct?

7 A. Yes, sir.

8 Q. So when you hired Mr. Major and Skyline you knew
9 that you might be giving up as much as 10 percent of what
10 insurance paid you?

11 A. Yes, sir.

12 Q. Why'd you think you needed a public adjuster?

13 A. I didn't even know what a public adjuster was.
14 I've never -- I don't recall ever hearing of one. But
15 talking to Jeff, he explained the situation, what they would
16 do for me. I didn't feel like it's what I needed, exactly
17 what I needed. Real estate is what I do and this type of
18 stuff kind of on the side is residual, but there's no way I
19 could have fought the insurance company to get what I needed
20 to get.

21 Q. Did he tell you -- did he tell you about proof of
22 loss?

23 A. Yes, sir.

24 Q. Did you think you could do that on your own?

25 A. No, sir.

1 Q. You saw those volumes of -- his four-volume book
2 with the first 152 Page 1800 entry estimate of repairs. Is
3 that better than you would have been able to do on your own?

4 A. Yes, sir.

5 Q. Homeland Security, did they -- I mean, the building
6 was uninhabitable afterward, correct?

7 A. Yes, sir.

8 Q. Did they suspend their lease with you?

9 A. They did suspend it.

10 Q. Until when?

11 A. I think they gave me 140 days, maybe 160, I don't
12 quite remember that number, to get it back in shape and for
13 them to accept it or they would cancel the lease.

14 Q. Did Homeland have expectations and even legal
15 expectations about the condition of the building being in a
16 certain condition for them to continue with your lease?

17 A. Yes, sir. They actually send their own people in,
18 I don't know, the environmental people where they test the
19 air and for mold. And they came several times through the
20 process and would give us an update on where we were, and we
21 successfully passed their tests.

22 Q. Those same conditions applied, though, didn't they,
23 before the storm hit Lake Charles? You still had the same
24 conditions in the contract with Homeland; the building had to
25 be in a certain condition?

1 A. Correct. They come by on a regular basis to check
2 it out and walk the building, look at it, the entire
3 building, and say, hey, here's your notice you need to --
4 whatever they think needs to be done to it to be in a safe
5 condition that people can inhabit; and they would do that
6 periodically.

7 Q. When you bought the building there was an
8 inspection report and someone had gone out, inspected it, and
9 pointed out that there were some things that needed to be
10 repaired and maintained on the building, correct?

11 A. Yes, sir.

12 Q. Did you -- between the time that you bought it and
13 the two and a half years later when Hurricane Laura hit, did
14 you do those things, or some or all of those things, on the
15 list to get the building in good condition?

16 A. Yes, sir.

17 Q. Tell us some of the things that you did.

18 A. There was -- like, one of the exit doors in the
19 back, there was water coming in there, just rain, which ended
20 up being what -- there was an awning that they had tried to
21 attach to it that wasn't very good. It was coming in. So I
22 took that opportunity. I did the whole north end of the
23 building. They just re, I'm not sure the proper term,
24 caulked it and that satisfactorily took care of it.

25 The roof drains, sometimes they would, I guess, just --

1 that's a plumbing issue. I didn't realize plumbers worked on
2 roofs, but that's the situation. They're actually the ones
3 that come in and set the drains. There's a special drain and
4 those would leak. And Poole Roofing came in when I'd found
5 one leak and I said, "Look, just do them all and get them" --

6 Q. And he testified yesterday about -- Mr. Poole
7 testified about the work that he did on the roof before
8 Hurricane Laura to get the roof in good condition?

9 A. Yes, sir. And there was one section in the lobby
10 area, some skylights and stuff, they redid that entire area.

11 Q. Did you replace any carpets or floors in the
12 building?

13 A. We replaced flooring in the lobby. We did the
14 ceiling tile in there. We upgraded it, cleaned it up,
15 painted it. Did some other stuff on the second level, just a
16 lot of cosmetic stuff for that.

17 Q. Mr. Poole testified that he did the work to the
18 roof before the storm. Mr. Wolff pointed out, on behalf of
19 Scottsdale, that there was no invoice for it. You're sure
20 Mr. Poole did the work?

21 A. Yes, sir.

22 Q. Why no invoice?

23 A. Sometimes -- like, I know Ryan, his son. His son
24 would come by and do some things. I mean, they're big time.
25 And I say big time, way bigger than anything that I have.

1 They did the roof, but they do some big projects. So I'm
2 guessing it was just so small that they come by, ten guys
3 show up, they'd get up there and knock it out in a couple
4 hours. Ryan grew up with my son. So I never asked for
5 anything free, but they did that. Some of the things they
6 did after that part of it they did, the roof part they did, I
7 did pay some for that.

8 Q. How about the other things that he did do the
9 building; why no invoices, the other maintenance that you did
10 before the storm?

11 A. Well, a lot of it I did on my own. I tell you,
12 that building, from the time I got it to pre-hurricane, it
13 was a much better building. I did -- I was constantly doing
14 things, anything that would come up, particularly leaks. I
15 know what water damage can do so I was -- anything that
16 happened there, I was always on top of it. Did a lot myself
17 and got little odds and ends. Friends would come help me
18 just that I knew in certain trades.

19 Q. For a commercial building like this, Mr. Wolff
20 pointed out that you testified that Homeland Security's like
21 a gold tenant that's about as good a tenant as you can get.

22 A. I found out in the real estate world, being in it,
23 that, yes, sir, they are.

24 Q. And before this storm was their lease coming up for
25 renewal?

1 A. We were in the middle of negotiations for a new
2 lease when Laura hit.

3 Q. Did you do anything -- or what'd you do to have the
4 greatest chance of getting them to come back and renew the
5 lease?

6 A. Well, it seemed like the negotiations had stalled,
7 which if I were them I would have stalled it, too, not
8 knowing what was happening. So my goal ultimately when I
9 signed the Encore contract --

10 Q. Back up. I'm not talking about after the storm.

11 A. Okay.

12 Q. I'm talking about before the storm.

13 A. Before the storm, I mean --

14 Q. Was it important to have the building in good
15 condition to entice them to re-up the lease?

16 A. Yes, sir.

17 Q. So at that point the storm hits and they suspend
18 the lease, correct?

19 A. Yes, sir.

20 Q. Did you want them to come back as a tenant and
21 re-up the lease?

22 A. Absolutely.

23 Q. And what did you need to do to make that happen?

24 A. I needed to meet their deadline they gave me.

25 Q. By repairing the building by a certain date?

1 A. To get it into acceptable -- they have some high
2 standards. And that was my goal, is to get -- once I decided
3 to go that route -- I could have left it. I guess I would
4 have been sitting there with a torn up building, no insurance
5 at this point. So my goal was to get it ready for them to
6 move back in.

7 Q. You submitted the Skyline estimate, and there's
8 already been testimony, to Monte Jones, Scottsdale's
9 independent adjuster, agent, that came out there physically
10 on September 15th, correct?

11 A. Yes, sir.

12 Q. And am I correct that the only payment that
13 Scottsdale made within 30 days, which we've established is
14 the deadline under Louisiana law, was the \$250,000?

15 THE COURT: Hold on one second. He's got an
16 objection. Come to sidebar.

17 **BENCH CONFERENCE**

18 THE COURT: What's your objection?

19 MR. WOLFF: It's multiple level. It's --

20 THE COURT: Let's get everybody here because DD's
21 fussing at me about not being able to hear.

22 MR. WOLFF: It's a multiple level objection. He is
23 asking this witness to talk about legal conclusions.
24 There's no foundation in terms of the law establishes
25 it's 30 days from the day he came out.

1 THE COURT: He can ask how long it took to get the
2 payment.

3 MR. WOLFF: Certainly he can do that, but he
4 cannot --

5 MR. COX: I'll rephrase the question.

6 MR. WOLFF: He can't include that the law
7 establishes this 30 days. He can say, "When did he come
8 out," and "When did you pay it?" That's factual
9 predicate. I've got no problem with that. It's adding
10 the legal texture into it.

11 THE COURT: Then you can ask him was that more than
12 30 days. Just leave the legal aspect --

13 MR. COX: Sure.

14 THE COURT: I would ask, "Is that more than 30
15 days?" Here again --

16 MR. WOLFF: That's fine.

17 THE COURT: I understand what you're saying. You
18 don't want the preface of the legal statutory --

19 MR. WOLFF: That's right.

20 MR. COX: No problem.

21 MR. WOLFF: -- satisfactory proof of loss so we've
22 got a whole -- but the time -- so we're going to
23 sustain -- or you're going to sustain?

24 THE COURT: I'm going to sustain and ask him to
25 rephrase the question.

1 MR. WOLFF: Can I have you announce that to the
2 jury, because I come up here looking like I'm
3 interrupting things.

4 THE COURT: Absolutely. I think I, in the past,
5 have said sustained or overruled.

6 MR. WOLFF: I've got some overrules. I just want
7 to hear one sustain so I've got some juice.

8 THE COURT: Everybody likes to win.

9 **PROCEEDINGS CONTINUED**

10 THE COURT: The objection is sustained. Mr. Cox, I
11 would ask that you rephrase the question.

12 MR. COX: Thank you, Your Honor.

13 BY MR. COX:

14 Q. Mr. Odom, was this \$250,000 payment the only
15 payment you got from Scottsdale Insurance Company within 30
16 days of when you gave them that four-volume detailed
17 estimate?

18 A. Yes, sir.

19 Q. All of the other Scottsdale payments were after 30
20 days, weren't they?

21 A. Yes, sir.

22 Q. What was your reaction to the \$250,000 payment?

23 A. Scared to death.

24 Q. Why?

25 A. When I'm looking at at least a \$2 million, as they

1 say, at least a \$1.5 million repair, that did not even come
2 close to what I'd already put my signature on and committed
3 to getting the building repaired.

4 Q. Were you concerned about the building and your
5 business?

6 A. I was in fear I was about to go bankrupt.

7 Q. In September you got a bill for \$491,000 from All
8 Clear, didn't you?

9 A. Yes, sir.

10 Q. \$51,000 bill from Crest Exteriors for the temp
11 roof, correct?

12 A. Yes, sir.

13 Q. A \$9500 or so bill from Jacques Bourgeois, correct?

14 A. Yes, sir.

15 Q. And you submitted all those things to Scottsdale in
16 September, correct?

17 A. Yes, sir.

18 Q. Was that payment enough to cover all that?

19 A. No, sir.

20 Q. You also had to fix your building. You had to hire
21 someone to repair the building, didn't you?

22 A. Yes, sir.

23 Q. Did Scottsdale Insurance Company fund the repairs
24 of the building?

25 A. No, sir.

1 Q. What was your expectation -- when you paid the
2 premiums for this policy what was your expectation that
3 Scottsdale would do for you if your building suffered some
4 catastrophic damage?

5 A. I was expecting it to be like any other insurance
6 claim that I've had in my life, is that they come in,
7 evaluate it, send you a check to get started on your repairs
8 and in a reasonable amount of time.

9 Q. Did it surprise you that you were going to have to
10 fund the construction?

11 A. It did surprise me.

12 Q. So you hired us in November, November 11th, right?

13 A. Yes, sir.

14 Q. The only payment that Scottsdale had made before
15 that time was how much?

16 A. 250,000.

17 Q. Why'd you hire an attorney?

18 A. I didn't have, I feel like, any other option. I
19 wasn't sure how to -- and I was still questioning -- I mean,
20 I'm a half a million dollars into it by my signature. Like,
21 I can't turn back now. I've got to go forward. I can't just
22 pay -- have a torn up building and have a half a million plus
23 dollars that I have to pay and just say oh, well, I'll just
24 leave it. Plus I owed a million still on the --

25 Q. You signed your name to a contract to repair the

1 building with Encore Construction Company on December 23rd,
2 correct?

3 A. Yes, sir.

4 Q. \$1.36 million contract?

5 A. (Nods head up and down.)

6 Q. And you hadn't received any of that money from
7 Scottsdale yet, correct?

8 A. Correct.

9 Q. Were you reluctant to sign that contract?

10 A. It was hard. It was extremely challenging for me
11 to put my signature on another contract committing over a
12 million dollars that I did not have.

13 Q. We heard yesterday that the last communication with
14 your public adjuster from Scottsdale was before Thanksgiving
15 and that there were 18 e-mails that went unanswered and a
16 bunch of phone calls. What'd you think Scottsdale was doing
17 on the claim at this point, after November?

18 A. What I heard everybody else, that they were slow --
19 everybody was slow playing it, seeing how long it could last
20 and hold out, keep their money. I know a lot of contractors
21 that were in the area that ended up leaving because people
22 weren't getting insurance money, but I expected it to -- I
23 guess that's it.

24 Q. Were you concerned that your expected renewal of
25 the lease with Homeland wouldn't happen?

1 A. Yes, sir. I had no other reason -- I mean, they
2 gave me a deadline. It's the deadline.

3 Q. Was it your -- was it ever your goal -- other than
4 the air conditioner, the HVAC that you put in, was it your
5 goal to upgrade this building after the storm?

6 A. No, sir.

7 Q. In your claim to the insurance company did you
8 include -- did you expect the insurance company -- did you
9 expect Scottsdale to pay for any of the upgrades like the
10 HVAC that you upgraded? Did you expect them to pay for those
11 upgrades?

12 A. No, sir, not their responsibility.

13 Q. There was a \$1.36 million Encore contract; but
14 there were some additional charges from Encore above that,
15 correct?

16 A. Yes, sir.

17 Q. Do you remember the total of it?

18 A. Not off the top of my head, no, sir.

19 Q. Those additional amounts were change orders for
20 things that weren't related to the storm?

21 A. Yes, sir.

22 Q. Let's go through the bills that you had on this
23 job. Crest Exterior, \$51,000, that was for the temporary
24 roofing, correct?

25 A. Yes, sir.

1 Q. Did you pay it?

2 A. Yes, sir.

3 Q. That was incurred right up front in September,
4 correct?

5 A. Yes, sir.

6 Q. Capstone, what is that?

7 A. That's an environmental guy that came in and did
8 the moisture mapping to see what -- how much Sheetrock needed
9 to be taken out or what sections of the Sheetrock that were
10 wet that were not able to be dried. I guess there's a
11 standard that you can dry it up to a certain amount. And he
12 did the entire building.

13 Q. And that was right up front in September, correct?

14 A. I paid 5,000 down. I think the remaining balance I
15 paid later.

16 Q. Okay.

17 A. But it was incurred. My signature's on it so I'm
18 paying it or doing everything I can to pay it.

19 Q. But you eventually paid the full amount?

20 A. Oh, yes, sir.

21 Q. All Clear Restoration, there was a lot of testimony
22 about that. You thought that bill was excessive, 491,000,
23 didn't you?

24 A. I was thinking I'm in the wrong business. Yes,
25 sir, I thought --

1 Q. But eventually, the testimony was, you were able to
2 negotiate that down to \$330,639, correct?

3 A. Yes, sir.

4 Q. Did you pay all that?

5 A. Yes, sir, I did.

6 Q. Jacques Bourgeois Electric, that was for some
7 electric work right up front where he came in, looked at the
8 electrical and all that right after the storm, correct?

9 A. Yes, sir.

10 Q. Did you pay that yet?

11 A. I have not.

12 Q. Do you owe it?

13 A. I do owe it.

14 Q. And you incurred it right after the storm, correct?

15 A. Yes, sir.

16 Q. Martin Insulation, \$10,000, that was an upgrade.
17 It was a \$36,000 bill, correct?

18 A. Correct.

19 Q. But 10,000 of it, as you understand it, was covered
20 under that construction upgrades --

21 A. Yes.

22 Q. -- in the contract and that's why we're only
23 putting 10,000 of the 36?

24 A. Yes, sir.

25 Q. Did you pay that?

1 A. I did pay that.

2 Q. Mr. Poole testified yesterday that that was his
3 final bill, \$276,000?

4 A. Yes, sir.

5 Q. But the fact is -- how much of it have you paid; do
6 you know?

7 A. I think all but about 30,000.

8 Q. 36,000 is, I think, what he says on his invoice.
9 Do you legally owe Mr. Poole?

10 A. Yes, sir.

11 Q. Does he expect to be paid?

12 A. Thinks he does.

13 Q. Do you expect to pay him?

14 A. Yes, sir.

15 Q. Encore Construction, that number's a little
16 different than the 1.36 million. It's a little lower. Do
17 you know why it's a little lower?

18 A. Because there's things in there that are my
19 responsibility, not the insurance responsibility.

20 Q. And all the things -- you went through that bill
21 line by line. All the things that weren't related to the
22 storm you took out?

23 A. Yes, sir.

24 Q. Did they charge interest on the job?

25 A. They are charging interest now.

1 Q. And what's the total that you owe in interest to
2 date as of February?

3 A. I think it's \$17,000.

4 Q. That Encore bill, there's been testimony it hasn't
5 been paid in full. I think 900 something thousand has. Are
6 they just going to let you not pay the rest or do you legally
7 owe it?

8 A. I legally owe it.

9 Q. And you signed a contract, a binding contract to
10 pay it, didn't you?

11 A. Yes, sir.

12 Q. Industrial Refrigeration, that was for some repairs
13 of the -- that wasn't the whole HVAC system, correct?

14 A. No, sir.

15 Q. What was it?

16 A. The outside units, something had hit the coils and
17 they had to come in -- well, they came in, just checked
18 everything. That type of system, they had to re-get it, make
19 sure it was viable. It's got fluids and different things in
20 it. But this outside unit was broken, busted. They just had
21 to repair that. So it was to make sure that everything was
22 in condition to start back up.

23 Q. Have you paid it?

24 A. Yes, sir.

25 Q. So all of these bills on this page you either paid

1 in full or you legally owe them?

2 A. Yes, sir.

3 Q. And the work's been done?

4 A. Yes, sir.

5 Q. There was some testimony about some windows that
6 still need to be repaired. That's not on here. It's not a
7 cost that you've incurred yet, true?

8 A. Correct. Yes, sir.

9 Q. Scottsdale's expert Granger Stuck is going to say
10 the windows need to be repaired and it's about 160,000. Is
11 that something you intend to do?

12 A. Yes, sir.

13 Q. So looking at that total, and they've said the math
14 is right, \$2,031,000, if Scottsdale says that the cost of the
15 job has only been \$1.79 million, true or false?

16 A. Can you ask that again.

17 Q. If Scottsdale says that the total cost of the job
18 to you is only \$1.79 million, true or false?

19 A. False.

20 Q. That's the actual cost to you so far, correct?

21 A. So far, yes, sir.

22 Q. You've gone through all the bills on that sheet,
23 haven't you?

24 A. Yes, sir.

25 Q. And I have them here, but I'm going to flip through

1 them. Crest Exterior, two pages, and the total of that was
2 51,000, correct?

3 A. Yes, sir.

4 Q. And without putting them up there, that was also
5 true for Capstone, the amount was correct?

6 A. Yes, sir.

7 Q. That was the bill?

8 A. (Nods head up and down.)

9 Q. For All Clear, we talked about it, it was 491,000
10 but you ended up only paying 330, correct?

11 A. Yes, sir.

12 Q. Jacques Bourgeois, that bill was accurate, correct?

13 A. Yes.

14 Q. Martin Insulation, we talked about only 10,000 of
15 it's covered, correct?

16 A. Yes, sir.

17 Q. Poole Roofing, he testified to what his total bill
18 was yesterday, 276,000 and some change --

19 A. Yes, sir.

20 Q. -- correct?

21 Encore, we talked about you took the whole contract
22 number and you subtracted out anything that wasn't related to
23 hurricane damage and you did that in detail, correct?

24 A. Yes, sir.

25 Q. And then you added in the interest?

1 A. Yes, sir.

2 Q. And then Industrial Refrigeration, we just talked
3 about that. That was the correct amount?

4 A. Yes, sir.

5 Q. The building was completed about August of 2021?

6 A. I believe that's about when.

7 Q. Have you had to borrow any money to fund the
8 construction?

9 A. Yes, sir.

10 Q. How much have you had to borrow?

11 A. About 160,000.

12 Q. And you still owe All Clear -- I'm sorry. That's
13 wrong. You don't owe All Clear. You paid them in full.

14 A. (Nods head up and down.)

15 Q. You still owe Encore?

16 A. Still owe Encore.

17 Q. You still owe Ricky Poole some money?

18 A. Yes, sir.

19 Q. And you still owe Jacques Bourgeois some money?

20 A. Yes, sir.

21 Q. And you still have to pay for the over \$150,000 in
22 window repairs that haven't been done yet?

23 A. Yes, sir.

24 Q. And you've paid out all the money you got from
25 Scottsdale, haven't you?

1 A. Yes, sir.

2 Q. Thank you, sir. I don't have any other questions.

3 A. I have -- I made a comment, a statement, used a
4 word when talking about the roof and when Ricky repaired it.
5 I used the word entire. He did not repair the entire roof.
6 He looked at it, the entire roof, and he patched the areas
7 and repaired the areas that needed repaired over the entire
8 roof. So I just wanted the clarification on that, that I
9 didn't misstate that.

10 Q. Thank you.

11 MR. WOLFF: Possible for a quick break?

12 THE COURT: Sure. Absolutely. We'll take a ten
13 minute break. Is that okay? Thank you. All rise for
14 the jury.

15 (Jury exits courtroom.)

16 THE COURT: Mr. Cox, the clerk is asking me have
17 you admitted those, all those invoices, or have they
18 already been admitted.

19 MR. COX: They've already been admitted.

20 THE COURT: Very good.

21 (Recess is taken.)

22 THE COURT: You ready, Mr. Wolff.

23 MR. WOLFF: Yes, Your Honor.

24 MR. COX: Your Honor, I have a couple of
25 housekeeping things, if I may.

1 THE COURT: Sure.

2 MR. COX: Exhibits 1 and 2, there's no objection to
3 them. We've been told by your clerk that they have not
4 been admitted.

5 THE COURT: Okay.

6 MR. WOLFF: No problem.

7 THE COURT: Okay. You want to put them in now, in
8 front of the jury?

9 MR. COX: We'll put them in now. We referred to
10 them through witnesses and stuff.

11 THE COURT: All right.

12 MR. COX: And then I just referred with Mr. Odom to
13 Exhibits 52 through 58. We have the Encore contract in,
14 but there are additional bills that we just discussed
15 that I would offer.

16 THE COURT: Okay. Any objection, Mr. Wolff?

17 MS. WOLF: I think we just need to review them. I
18 wasn't aware. Do they have exhibit numbers on them?

19 MR. COX: Those are the exhibit numbers.

20 Finally, while she's doing that, Your Honor, I
21 wanted to reiterate we had a discussion off the record
22 the other day about Mr. Odom's finances and the amount
23 of money he makes on this job, so I don't have to get up
24 and object --

25 MR. WOLFF: That door is wide open to send a truck

1 through. He's saying he had a loan that he had to pull
2 out. He talked about it. He said it was gold. I think
3 he's opened -- I wasn't going to spend big time on it,
4 but he's pled about how nerve-racking --

5 THE COURT: Explain to me this. What is the
6 relevance of the amount of money he has in his checking
7 account?

8 MR. WOLFF: I don't intend to do that.

9 THE COURT: What do you intend to do?

10 MR. WOLFF: I don't intend to do much more than to
11 talk about the gold that he's already raised. The whole
12 notion of the loan that he took out, that's news. We
13 don't have that. That wasn't disclosed. I don't know
14 anything about it. He really has opened up his
15 finances. I can tell you, I looked at his finances in
16 January and February. He had hundreds and hundreds of
17 thousands of dollars in that account. I wasn't going to
18 go there, but now he's talking about --

19 THE COURT: How do you know the money in his bank
20 account isn't from the loan?

21 MR. WOLFF: Now, I can get there. I don't want to
22 go there.

23 THE COURT: Then don't.

24 MR. WOLFF: Well, he already has; and he needs to
25 not go there if he doesn't want me doing it. In other

1 words, I don't want to hear in closing that he had to
2 take a loan out and all of that.

3 THE COURT: Well, we've already heard that.

4 MR. WOLFF: Well, if he's going to say it in
5 closing, then I need to address it. I mean, golly. I
6 wasn't going there. I didn't make this an issue.

7 THE COURT: I guess what I'm trying to understand,
8 Mr. Wolff, is what's the relevance here. I understand a
9 lot of people did not have money waiting on their
10 insurance and people had to take out loans. That's the
11 facts. It happens a lot.

12 MR. WOLFF: Facts. If you go in Eaux Holdings'
13 account, there's all kinds of property. He took out a
14 loan.

15 THE COURT: So? I mean, just because I have a
16 couple hundred grand in my bank account --

17 MR. WOLFF: Several hundred grand.

18 THE COURT: -- and I go -- my house was damaged and
19 I was waiting on my insurance company, I'm not obligated
20 to pull my own personal money out of my bank account to
21 fund my repairs when I got insurance I'm waiting on. I
22 guess I don't understand the relevance of his financial
23 situation. I think a loan is very relevant, if he
24 really had to pull out a loan.

25 MR. WOLFF: Why is that relevant for the --

1 THE COURT: Because he wasn't getting his insurance
2 money and he had to make repairs.

3 MR. WOLFF: So?

4 THE COURT: I guess I don't understand what your
5 point is about his personal finances. Why don't you
6 expound to me -- rather than us talking in hypotheticals
7 and generalities, tell me specifically and I'll tell you
8 if I'll let you ask it, what specifically do you want to
9 ask Mr. Odom about his finances, and I might let you do
10 it.

11 MR. WOLFF: I did not want to ask anything.

12 THE COURT: Well, you're telling me now you do.

13 MR. WOLFF: I did not until he asked about the
14 loan.

15 THE COURT: Okay. He's asked about the loan. What
16 do you want to ask specifically? Since that was asked,
17 it was brought up, tell me specifically what do you want
18 to ask him about his personal finances in response.

19 MR. WOLFF: I really don't want to get into detail
20 with him.

21 THE COURT: If you're going to get into details
22 with him on the stand, you've got to tell me or I'm not
23 going to let you do it.

24 MR. WOLFF: I didn't phrase it properly. I don't
25 want to get into detail with him on the stand about the

1 finances. But the point is Eaux Holdings holds a number
2 of properties and from time to time he gets loans. What
3 we're saying is they had plenty of money along the way
4 as monies became due to pay all of that, and I'll lay
5 that out. I did not anticipate. And if I'm on notice
6 now that they're saying, oh, we had to get a loan and
7 make that a big deal in closing, I have to --

8 THE COURT: I never heard the amount of the loan.

9 MR. WOLFF: I think he said 140,000, 160.

10 THE COURT: 160? Okay. \$160,000 loan. What do
11 you want to ask him about it?

12 MR. WOLFF: That he has other properties in there,
13 that that account funds any number of things that he
14 has, ordinary bills, and from time to time he gets loans
15 in the ordinary course of his business. I can stop at
16 that but --

17 THE COURT: I think what you need to ask him is
18 this: Did you take this loan out in response to the
19 hurricane? He can say yes or no.

20 MR. WOLFF: On what property?

21 THE COURT: Then you can ask him: Do you have
22 multiple properties? Did you spend any of this money on
23 any of your other properties? I think that's fair game.
24 You can ask him that, and he'll say yes or no. I mean,
25 you did bring up the loan; and I think he has the right

1 to ask him specifically. What I'm not really interested
2 in hearing about and I don't think the jury's
3 interested, and that's my job to set the parameters
4 here, keep everybody in their lane of travel, but I
5 don't think asking him beyond about the loan -- I'll let
6 you ask about the loan a little bit; but getting into
7 all his other personal finances, absolutely not. I
8 don't think there's any relevance to that whatsoever.

9 MR. WOLFF: That wasn't my plan. I wasn't going
10 with any of this until the loan thing came. We didn't
11 even know about it. That was on the stand news for us.

12 THE COURT: You know, it's probably like one of
13 those things I tell people every once in a while, you
14 know, when they're taking a deposition and they
15 complain. Hey, you ask the right questions, you get the
16 right answers. I don't know. I wasn't at his
17 deposition. I don't know if anybody asked him about it
18 or not.

19 MR. WOLFF: I asked him all kinds of stuff and was
20 told no, no, no. We've asked for all this. I mean,
21 it's water under the bridge. But is this an issue that
22 goes to the jury about he had to take out a loan?

23 THE COURT: No, it's not going on the verdict form.
24 I can promise you that.

25 MR. WOLFF: Okay. Well, look, here's what --

1 THE COURT: I think it went to the fact that he had
2 to -- he didn't have his insurance money that he needed
3 to repair his building and he's got a duty to mitigate
4 his losses under the policy and he was trying -- to me,
5 that's probably the way I look at it. He was trying to
6 mitigate. I mean, I didn't go take out a loan while I
7 waited on my insurance company, fortunately; but, you
8 know, they paid me pretty timely. But I know a lot of
9 people who had to do that. Happens. Didn't have the
10 money in their bank account to fund it.

11 MR. WOLFF: I understand.

12 MR. COX: Your Honor, Ms. Wolf has agreed to admit
13 52 through 58.

14 THE COURT: Okay. So here's where we are. Let's
15 make sure we're all on the same page. You can certainly
16 ask Mr. Odom about this loan and some more details about
17 the loan and what he used the funds for. You can ask
18 him when we got the loan. I think that door was opened,
19 and I think you're well within your cross-examination to
20 explore this loan with him and everything that went
21 along with that. Is that fair enough?

22 MR. WOLFF: Why would I want to do that, really.

23 THE COURT: You don't have to. I'm just giving you
24 the opportunity.

25 MR. WOLFF: I understand.

1 THE COURT: That's your call. You're asking me
2 about it. I'm just telling you what I'll let you do.

3 MR. WOLFF: Excuse me.

4 THE COURT: I guess I'm still confused why we're
5 having this discussion, then.

6 MR. WOLFF: I didn't bring it up, Your Honor.

7 THE COURT: Okay. Well, my bad, then. I thought
8 you did bring it up.

9 MR. WOLFF: No, they brought up the loan.

10 THE COURT: No, no. I know that. But now you're
11 asking me. I want us to be on the same page.

12 MR. WOLFF: No, no. I was --

13 THE COURT: He brought up the loan. I got it. You
14 want to ask him questions about the loan. Ask him.
15 I'll tell you do it.

16 MR. WOLFF: I understand.

17 THE COURT: But when you use the term personal
18 finances --

19 MR. WOLFF: I'm not going into that.

20 THE COURT: Okay. Good. I wanted to be sure. All
21 right. Mr. Odom, you can retake the stand. Are we
22 ready to bring in the jury? Let's bring the jury in.

23 (Jury enters courtroom.)

24 THE COURT: Ladies and gentlemen. Mr. Wolff, you
25 can proceed with your cross-examination.

1 MR. WOLFF: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. WOLFF:

4 Q. Good morning, Mr. Odom.

5 A. Good morning.

6 Q. So we've got some background. I don't want to go
7 through all of this. We're talking about 620 Esplanade.
8 This is the building that is what we've been talking about,
9 correct?

10 A. Yes, sir.

11 Q. And I think there's a little confusion there.
12 There's a Four-0 and then Eaux Holdings, and Eaux Holdings is
13 the actual owner?

14 A. Eaux Holdings is the owner of 620 Esplanade.

15 Q. Okay. Early on you kind of thought it was Four-0
16 and then realized that there was a tax thing, a 1031 exchange
17 or transfer, and it actually was owned by Eaux Holdings?

18 A. That did not happen. And then I, being
19 inexperienced, just didn't realize what had happened. And I
20 was thinking it was back in Four-0 when the 1031 didn't
21 happen and I just didn't know any better.

22 Q. And your counsel talked about you dabble in real
23 estate. You have a number of real estate properties,
24 correct?

25 A. (Nods head up and down.)

1 Q. And you have -- some of them are investment
2 properties?

3 A. Yes, sir.

4 Q. And then you also have your building for your
5 office next-door at 622 Esplanade?

6 A. Yes, sir.

7 Q. Okay. And you have about ten different LLC's at
8 your end; is that right, ten different companies?

9 A. Yes, sir.

10 Q. And we looked at some documents, talked about it
11 today. You bought this in 2018 for \$2 million. The GSA was
12 in there with the Department of Homeland Security. That was
13 a tenant in there. And right before the storm, just so it'll
14 be clear, the second floor had no tenants in it; is that
15 correct?

16 A. That's correct.

17 Q. It hadn't been built out for any tenants, right?

18 A. It was -- when you say -- it was built out already.

19 Q. The second floor was?

20 A. Yes, sir.

21 Q. So it wasn't already trimmed back ready to
22 build-out when someone came in?

23 A. No, sir.

24 Q. It was move-in ready?

25 A. It was move-in ready, yes, sir.

1 Q. If that's what they wanted?

2 A. If that's what they wanted. Now, if they had any
3 special requests, we'd adjust that; but it was built out.

4 Q. As of the time right before the storm you had no
5 takers on that second floor?

6 A. That is correct.

7 Q. So as the hurricane struck -- and we heard about
8 Mr. Major. He was there the day after. You talked with him.
9 He had his contract ready, and we've looked at it. You
10 signed it the day after the hurricane, right?

11 A. Yes, sir.

12 Q. Okay. Had you submitted the claim yet, or do you
13 know?

14 A. Not on that building, no, sir.

15 Q. Okay. And so the process of the claim began.
16 Mr. Major put together that stack. We saw that. And then
17 you've heard the testimony that he asked Scottsdale to
18 advance 250,000, right?

19 A. Yes, sir.

20 Q. And Scottsdale did that right after, right?

21 A. Yes, sir.

22 Q. And then there were -- there was an investigation
23 as to the property and what the actual cash value was versus
24 the replacement?

25 A. I don't know the details of that.

1 Q. All right. This was an old building, though,
2 right?

3 A. It was more than a year old. What do you determine
4 old? It was a very good building, very well built building.

5 Q. It was built in 1976, right?

6 A. I was built in 1960. I'm old.

7 Q. So when you met with Mr. Major at this first
8 meeting he explained that there was some confusion about what
9 building. He looked at your other policy and goes, "Oh, this
10 isn't going to help you at all," as I understood his
11 testimony. Is that what you understood, that there was
12 confusion as to the policy that they were looking at?

13 A. Yeah, we got him the wrong policy.

14 Q. Okay. And did you-all talk about this building,
15 about the condition of it before the storm?

16 A. Jeff and I?

17 Q. Yes, sir.

18 A. I did not meet Jeff until after the storm.

19 Q. I can see why things are confused. The day after
20 the storm did you and Mr. Major talk about the condition of
21 the building before the storm?

22 A. No, sir.

23 Q. Did you provide him with that inspection report on
24 this big investment you had?

25 A. No, sir. I've never in any of my insurance claims

1 ever been asked for an inspection report at all. It was only
2 obtained after I found out y'all were looking for it. When
3 y'all requested it and I went to the bank, they couldn't find
4 it. And I asked them to dig a little more and they found it
5 in some e-mail. The loan officer had left the bank. They
6 were able to go back and get his e-mails and they found it
7 that way.

8 Q. But this was the biggest investment, I think you
9 said, you ever made; and you did not have the inspection
10 report. You did not give -- I think my question was: You
11 did not give the inspection report to Mr. Major, right?

12 A. No, sir.

13 Q. And you did not give that inspection report to
14 Scottsdale, did you?

15 A. I did not have it to give.

16 Q. You did not get it for us until after we had to
17 issue a subpoena to the bank, right?

18 A. It wasn't asked of me before that. When it was
19 asked of me is when I started trying to find it.

20 Q. So do you know whether the case management order
21 requires production of appraisals and other information on
22 the property?

23 A. I'm not familiar with those technical details. As
24 I say, I've never done it before on any other insurance
25 claims that I've had. And I know most of the people that --

1 the people I know didn't produce one for any of their claims.
2 So I don't think that's normal. Just my opinion.

3 Q. Did you provide any other information to Mr. Major
4 about the work and maintenance you did on the property before
5 the storm?

6 A. Most of my records -- anything I did was verbal.
7 We -- seven days before the hurricane hit we accepted our new
8 office. Seven days after I got in my new building or in the
9 process of moving from my other office into that building the
10 hurricane hit. We had records scattered, water damage. And
11 just through the process, we took all of Homeland Security's
12 property out of their building and put it into my warehouse
13 next-door with all of my stuff. I just didn't have --
14 couldn't find it.

15 Q. So you did or did not -- you had verbal discussions
16 with Mr. Major --

17 A. I said anything that I had would have been verbal.

18 Q. Okay. So what, if anything, did you tell Mr. Major
19 about what you did before the storm?

20 A. I don't recall that conversation.

21 Q. Do you know if that conversation ever occurred?

22 A. We walked the property. Mr. Major made me feel
23 somewhat comfortable being in the situation that we were in.
24 I felt really good that if I had any hope of getting this
25 building back up -- I had two choices, let it sit or move

1 forward. And I'm not one just to sit around and take a
2 chance. Okay. It's totalled. I'll take the paycheck and go
3 home. I thought it was important to the community to get
4 this building back up. It would have been an eyesore if I'd
5 have made the decision right then not to do anything. I
6 wanted to contribute to the recovery, not make it worse.

7 Q. And you also wanted to keep that tenant, right?

8 A. Without the tenant the building is -- I mean, it's
9 an office building, a rental property, yes, sir, I wanted to
10 keep.

11 Q. And I think you were talking about the arrangement
12 you had with the GSA. I think you may have mentioned you had
13 140 days. Can you tell us about that.

14 A. Well, I had 140 days to get them to accept it to
15 move back in, or whatever that number is. I don't recall.
16 Somewhere in that range.

17 Q. I wasn't going to go there yet, but we're here. I
18 apologize because I organized -- do you have an understanding
19 as to whether it could have been longer than that?

20 A. Sir?

21 Q. Well, I'm going to show you.

22 MR. WOLFF: This is D-10, the tolling agreement.

23 MR. COX: No objection.

24 MR. WOLFF: Thank you. This is the agreement
25 that -- excuse me.

1 THE COURT: Put it up on the board.

2 MR. COX: May I see that real quick?

3 THE COURT: Take it off the board.

4 BY MR. WOLFF:

5 Q. I just want to be clear on this. So September 4th
6 you signed an agreement with GSA. Because everyone in Lake
7 Charles had all these problems and was devastation
8 everywhere, everybody needed time to get work done. And this
9 was an agreement with the GSA to toll it or hold it open so
10 you could keep that tenant online, right?

11 A. This right here?

12 Q. Yes, this tolling agreement.

13 A. You mind if I read it?

14 Q. Oh, sure. I'm really looking at the backside, but
15 you tell me when you're ready.

16 A. Okay. Let's look at the backside.

17 Q. Yeah. It's really a small point I'm trying to
18 make. You had 270 days?

19 A. I was off a little bit.

20 Q. Just a little bit.

21 A. Wasn't in the range. I was wrong.

22 Q. That's okay. I just wanted the jury to understand
23 that everyone knew this was a process. It was going to take
24 time to rebuild. The Government knew and everyone was
25 working to get this done. And you had made the decision

1 early on that you wanted to keep that tenant in there because
2 that's the value of that building because that's where the
3 income was coming from, right?

4 A. Yes, sir.

5 Q. And the second floor wasn't producing anything so
6 if you didn't have that first floor tenant you'd have a note
7 and no money coming in?

8 A. That's correct.

9 Q. All right. So you'd made the decision to work with
10 the GSA. And the Government then came in and was saying,
11 okay, now that we've got to work on this, they wanted some
12 changes to that space, right?

13 A. I don't recall that.

14 Q. Well, I mean, they were coming in picking the kind
15 of insulation they wanted. They wanted soundproof jail
16 cells. They had different color schemes. They had a whole
17 set of things that had to go through the government process
18 of, okay, yes, we can do that. I mean, the Government stuff
19 they had to do, they needed to approve the plans for the work
20 on that first floor for their space, right?

21 A. My understanding of that process is that GSA does
22 have a materials -- there's a list somewhere out there, a
23 website, that contractors use and they go through there and
24 find items that are already approved by GSA. If not, then
25 they have to prove why they want to do it different. And

1 that process normally was, hey, we've got this tile, this
2 carpet, had to be a certain weight, go on your website, we
3 got one similar, is it okay, yes. It wasn't -- I say a
4 process. It was a process by definition, but it wasn't a
5 lengthy process because they have their -- and everything
6 that they're picking, I mean, that's just the replacement of
7 what was there.

8 Q. Just so that I'm clear, they did or did not ask for
9 upgrades as to the jail cell and the insulation and how they
10 wanted the build-out of that first floor?

11 A. We did not build anything out. There was
12 nothing --

13 Q. Well, it went to studs, right? I mean, we heard
14 that.

15 A. Studs?

16 Q. And then what was added on that? Do you know the
17 details --

18 A. Some of it. Not all of it went to studs.

19 Q. Okay. Do you know the details of what the
20 Government wanted in terms of upgrades?

21 A. I don't. They have specs of, like, when you walk
22 into the lobby and go into their little lobby, their area,
23 they have, I call it, bombproof walls. Somebody doesn't come
24 in and, if they do, it minimizes the damage to the people
25 inside. All we did was make sure that it went back like it

1 was. I don't know any different. Now, if it did, I don't
2 recall any knowledge of that. We were just making sure that
3 we met -- that everything was okay with them when we did it.
4 They did ask us, "Hey, make sure, you know, y'all do this."
5 And it was. It was as-is and we just built it back like it
6 was.

7 Q. Well, for example, they wanted upgrades in the
8 HVAC, the heating, ventilation, air conditioning system?

9 A. I do not recall that and don't think that happened.

10 Q. All right. So do you recall visiting with the GSA
11 about the build-out and the plans?

12 A. I do recall the meetings. You know, they came on
13 sight immediately. I say immediately. Pretty quick. They
14 had a lot to do. But I do recall meeting with them.

15 Q. And do you recall communicating with them and
16 telling them that your goal was to make this a much better
17 space?

18 A. No, sir, I do not recall that.

19 Q. Are you denying that you said that?

20 A. I am not denying I said that. I said I don't
21 recall it. If you have something to show me where I may
22 have, I'll be glad to look at it.

23 Q. I asked you this question in deposition. You said,
24 "Absolutely not. I didn't tell them that." Right?

25 A. I don't recall that.

1 Q. Did you read your deposition before today?

2 A. Hundred and something page, you know, I have.

3 Q. Okay.

4 A. And I may have been mistaken then, may be mistaken
5 now.

6 MR. WOLFF: Exhibit D-39, any objection?

7 MR. COX: No objection.

8 THE COURT: It'll be admitted.

9 MR. WOLFF: D-39. And to the extent I didn't do
10 this, because I know housekeeping is important, I move
11 to offer, file and introduce D-10.

12 THE COURT: Any objection to D-10, Mr. Cox?

13 MR. COX: That?

14 THE COURT: No, the previous one.

15 MR. COX: No objection.

16 MR. WOLFF: And I would offer, file and introduce
17 D-39?

18 THE COURT: It'll be admitted as well.

19 BY MR. WOLFF:

20 Q. That's an e-mail from you to the Government, right?

21 A. It appears to be, yes, sir.

22 Q. And you told them, "My goal is to make this a much
23 better space"?

24 A. Yes, sir.

25 Q. Okay. And that was your goal, correct?

1 A. And my goal along those lines is -- they did not
2 require any HVAC improvements. I chose to improve the HVAC
3 system and put in this -- they call it a VFR or some fancy
4 name for it to where each room is individually controlled.
5 So by betterment, when I did that for them, while we had
6 everything down to the studs -- and that was at my expense.
7 So the intent of that was solely on me. I did do that. It
8 was not part of the insurance claim.

9 MR. WOLFF: Okay. D-51?

10 MR. COX: No objection.

11 THE COURT: It'll be admitted.

12 BY MR. WOLFF:

13 Q. Okay. So this is about just exactly what you're
14 talking about. You were going to get bonus points for
15 upgrading that HVAC, correct?

16 A. According to bonus points, I think in a world where
17 we're trying to be more environmentally safe, I think this is
18 one of the things when I was talking to Evan and individuals
19 that by doing this there's actually benefits for your
20 building. And when individuals can control their own
21 environment in their office, warm, cold, that's -- I think
22 they like that. My goal in my world where I work, customer
23 service, one hundred percent. It's about the customer.
24 These were my customers and I want to do everything that I
25 can. And the slang bonus points is just something that --

1 I'm not sure where the points go.

2 Q. Understood.

3 MR. WOLFF: Okay. This is inspection report, D-61?

4 MR. COX: No objection.

5 BY MR. WOLFF:

6 Q. We've talked about this.

7 MR. WOLFF: Oh. Offer, file and introduce the
8 inspection report.

9 THE COURT: Any objection?

10 MR. COX: No objection.

11 THE COURT: All right. Admitted.

12 BY MR. WOLFF:

13 Q. So this is that inspection report we've been kind
14 of just looking at but just now introducing. This is the
15 inspection report that went with your \$2 million loan in '18,
16 correct?

17 A. I believe it appears to be.

18 Q. Right. And that's the confusion there we talked
19 about. Four-0, LLC was going to buy it and then you were
20 going to do a 1031 exchange and that never happened so the
21 real owner is Eaux, right?

22 A. Sir?

23 Q. The real owner is Eaux Holdings --

24 A. Yes, sir --

25 Q. -- correct?

1 A. -- of 620 Esplanade.

2 Q. Okay. And we had looked at, and I'll just put this
3 up there, there was a summary on the second page of minor
4 issues and then major issues. Then we talked about them in
5 some detail. There was the roof, there was the exterior
6 doors, exterior siding, the windows, moisture stains, and
7 there they were talking about fungal growth and elevator,
8 second floor. They're itemized there. And we'd asked for
9 any maintenance records that you had; do you recall that?

10 A. Yes, sir, I do.

11 Q. And you don't have any maintenance records?

12 A. I could not obtain any, find any.

13 Q. I think you told us that most of it was done as
14 favors.

15 A. No, that's not completely accurate. I did pay for
16 a lot of it.

17 Q. So wait. Just to be clear, we asked, if you'd have
18 paid for something, it would have been out of your Eaux
19 Holdings account. We established that before, right?

20 A. Not necessarily.

21 Q. Where would it --

22 A. It could have been out of Four-0, again, yeah.

23 Q. Okay. Out of Four-0 or Eaux Holdings. You have
24 checks at the bank. You could prove -- if you did some
25 maintenance, you could get those records, right?

1 A. Yes, sir.

2 Q. And we asked for those, right?

3 A. Yes, sir.

4 Q. And the answer we got was there were no checks at
5 all relating to any maintenance that you did in response to
6 this inspection report, no checks?

7 A. The biggest one -- I apologize.

8 Q. Can we answer the question. Then you can explain.

9 A. What's the question?

10 Q. There's no checks. You got no evidence of making
11 any payments at all for any of these repairs that you've been
12 talking about, including Poole Roofing, right?

13 A. I could not find any.

14 Q. Well, you went to the bank. You looked at your
15 account. You looked at Four-0. You looked at Eaux Holdings.
16 That's where they'd be. And they weren't there, right,
17 because you didn't write any checks?

18 A. Jody Guidry, Guidry Contractors, was one of the
19 groups that did some stuff; and I told you about Guidry. I
20 told that to you, that they did some stuff. So stuff was
21 through there, where I paid them, and it was they actually
22 had the sub do stuff.

23 Q. I didn't get any of the -- the answer I got and
24 your counsel responded, and I respect -- when they tell me
25 something I'm going to respect that's what it is. They said

1 there were none.

2 A. Well, I apologize if I misinterpreted or didn't do
3 it. I no means to deceive anybody. I don't do anything that
4 I'm scared to admit. I did throw some trash out the other
5 day because I didn't want my wife seeing a Little Debbie
6 cake. That should not have been done. That weighs on me.
7 But in this case I paid some people cash. I don't know the
8 complete answer. I do know that the work was done. You can
9 see the pictures of the roof where one picture is not, the
10 other picture there is where Ricky did the work. The entire
11 north end of the building was done by Colonial Glass as a
12 subcontractor to Jody Guidry. The backdoor was repaired
13 where it was leaking.

14 One thing I've learned through this, I will start
15 keeping better records.

16 Q. And I appreciate that and I don't mean to drill
17 down; but we've been asking, asking, and asking. And you
18 were in a deposition. We attached an exhibit to the
19 deposition. You were under oath in the deposition, right?
20 You knew this was serious business. I mean, you're saying
21 2 million plus and all sorts of things. This is a serious
22 matter, right?

23 A. Yes, sir.

24 Q. And we were asking -- after we found this
25 inspection report that had the issues, we were asking what

1 did you do before to fix these problems and asking for any
2 records.

3 "Well, I looked through my things and I don't know. I
4 can't find it."

5 I said, "Look at the checks. It would be Four-0 or
6 Eaux."

7 You said, "That's right." You said you would go --

8 A. Or cash.

9 Q. We talked about the checks. Cash, just hearing
10 about that now. But with respect to evidence of payment,
11 evidence of payment to fix things before that were problems,
12 you were going to look at the bank accounts for Eaux Holdings
13 and Four-0 and find any checks that went to maintenance.
14 That's all you had to do. And the answer we got back, and I
15 can show the e-mail but Somer will confirm, that there were
16 none, right?

17 A. I don't recall that. This is what I know. The
18 repairs were done. Maybe I did not get the checks to you. I
19 don't recall not doing that. I would not have intentionally
20 done that. My goal is to get this stuff cleared up so I can
21 get back to my life and I would have not done anything that
22 would have delayed that, which my life includes still
23 hurricane stuff.

24 MR. WOLFF: Somer, can we get confirmation that
25 this question was asked of the witness and that --

1 MS. BROWN: Your Honor, I don't think it's
2 appropriate for him to ask me.

3 THE COURT: Yeah, that's not appropriate.
4 BY MR. WOLFF:

5 Q. All right. You were asked in the deposition. You
6 could not find any evidence, written evidence, of any
7 maintenance, correct?

8 A. If that's what the record shows.

9 Q. You don't have any records so the record shows
10 there is no --

11 A. You said in deposition I said that. If the record
12 says I said it --

13 Q. Okay. You're not aware of any -- and this is
14 taking way longer than we need to take. I apologize if I'm
15 confusing this. You don't have any records of payment to
16 anyone? That might have been cash, might have been friends?

17 A. I cannot -- right now I don't have access to
18 research that. Again, I would not have done anything to
19 delay this or deceive anybody. I know the work was done. I
20 did some. Friends did some. Paid buddies cash to come over
21 and the work was done.

22 Q. And you're not disputing that what's in this
23 inspection report that we've looked at, this was an accurate
24 representation of the condition of the property? You're not
25 disputing that, right?

1 A. That was two and a half years ago.

2 Q. Right.

3 A. I don't recall. I don't recall.

4 Q. You're not disputing what's in the report, is what
5 I'm asking.

6 A. Oh, I've never -- no, sir.

7 Q. Okay. Thank you.

8 A. I've never looked at that. I mean, I looked at it,
9 I'm sure, upon purchase but that was it. I knew what I
10 needed to do and I started doing it.

11 Q. Did you keep records to separate what were your
12 upgrades that you wanted versus what was covered by
13 insurance?

14 A. I worked with the contractor to do that.

15 Q. And do you know -- do you have those records to
16 show what was separated?

17 A. I'm sure they exist. I don't have them with me,
18 no, sir.

19 Q. So you can't offer testimony on that, correct?

20 A. I don't understand that statement.

21 Q. You can't tell the jury now what the work that
22 Encore billed you for was storm related versus upgrades?

23 A. The big one was the HVAC system.

24 Q. Okay. Anything else?

25 A. Off the top of my head, I don't recall. The

1 insulation to the ceiling. No, that was separate. I paid
2 for that separate. 35,000 that I paid to get more insulation
3 because you have to have an R -- different R rating now than
4 when the building was built. 10,000 of that which was
5 covered by the policy. I funded the other 25,000.

6 Q. You funded with your own money?

7 A. Yes, sir.

8 Q. So you had to have extra money to fund any of the
9 upgrades that you wanted to make this building better?

10 A. For that one --

11 Q. Yeah.

12 A. -- I did.

13 Q. And that's -- you got, you talked about, the small
14 business loan you talked about with Mr. Cox? You took out a
15 loan?

16 A. Sir?

17 Q. You took out a loan with the Small Business
18 Administration?

19 A. No, sir, I did not take a loan out with the Small
20 Business Administration.

21 Q. Did you take out a loan with somebody?

22 A. I did.

23 Q. When was that?

24 A. A few weeks ago.

25 Q. Few weeks ago?

1 A. Yes, sir.

2 Q. With whom?

3 A. Lakeside Bank. It was to pay, at the time, the
4 latest Encore bill that I had.

5 Q. Which one was that?

6 A. The most recent one.

7 Q. And we'll be able to look at this; but you owed
8 Encore monies for work that they did that was not insurance
9 work, right?

10 A. I do owe them for work that's not insurance work.

11 Q. And you weren't able to provide us with a detailed
12 outline of this is insurance work and this is betterment
13 work? You couldn't do that, right?

14 A. Not sitting up here. I'm not that sharp.

15 Q. You don't have it anywhere that you know of, a
16 breakdown like that?

17 A. I don't recall.

18 Q. You haven't seen it in this trial, have you?

19 A. I don't recall it. No, sir.

20 Q. All right. So you understood that Scottsdale had
21 questions about the condition of the building and what was
22 storm related and what was pre-existing, right?

23 A. I was made aware of it by Mr. Lock yesterday. I
24 mean, I --

25 Q. And you knew that your coverage was designed to

1 replace your loss when you made repairs, right?

2 A. Ask that again.

3 Q. I'll start over. You bought the insurance policy.
4 You bought it to replace -- replacement cost value coverage
5 that required you to actually make repairs and do those
6 before you get paid, right?

7 A. I was not familiar with that exactly.

8 Q. You understand that now?

9 A. I understand what you're saying, that I shouldn't
10 get anything until I've done the repairs, is what I'm
11 hearing. I've never had an insurance company do that to me.

12 Q. Well, for example, the windows, you haven't made
13 those repairs?

14 A. That's correct.

15 Q. And so there's no bill to pay. You may have
16 intentions to repair them, but you've not undertaken to make
17 those repairs?

18 A. No, sir. We did not ask for the full amount. We
19 asked for what was -- we saw it would be \$2 million.
20 Mr. Major asked for 250. Got that. He said let's -- even
21 your insurance adjuster said it's a minimum of 1.5 million.
22 So even if I'd have got the million, that's only 66 percent
23 of what you say -- and that would have been enough to really
24 help me out, get me going. And y'all just shut down.

25 Q. Well, there's still money left on the policy,

1 right?

2 A. Yes, sir.

3 Q. Okay. And so if there's more work to do that's
4 storm related, if that's what it is and you do it, there's
5 money on that policy, right?

6 A. I don't know the details. I think there's still
7 outstanding stuff that I've done that I'm owed. Let me take
8 that back. I'm not sure at this point.

9 Q. So we have a dispute over whether the payments were
10 enough on certain things and whether it's too high, too low.
11 We're disputing that. But if there's other work that hasn't
12 been done and you're going to do it, then you have monies
13 left on your policy?

14 A. It's not that easy for me because I don't have the
15 confidence that I'll get it. Here's the fact of the matter.
16 I didn't get my money in a timely manner to where I felt
17 secure about moving forward. I was going out on a limb
18 getting it done because I knew I had to do it with very
19 little help from the insurance company.

20 Q. Well, the building's up. The tenant's in. You've
21 got a 15-year lease with an option to go for 17 years, right?

22 A. Yes, sir.

23 Q. There's an escalation clause so that the rent goes
24 up?

25 A. Yes, sir.

1 Q. And your counsel talked about that's a gold tenant?

2 A. In the real estate world, someone told me that one
3 time, so I'm using that from the real estate world, because
4 they're secure, they pay on time, and they honor their
5 contract.

6 Q. And you're getting 15,000 a month?

7 A. It's about 13, 14,000. Yeah, roughly. Round it
8 up, 15,000.

9 Q. 15,000?

10 A. Yes, sir.

11 Q. And --

12 A. And my note on the building is about 13,000.

13 Q. Okay. So we got lost because I think the question
14 I asked is: If there's work you're going to do in terms of
15 the repair work, if the windows haven't already been
16 accounted for, you can submit that, right? Let me rephrase.

17 A. I think it's been submitted and actually --

18 Q. They haven't done the work. They left. I
19 apologize. Encore left. They're not in the state anymore,
20 are they?

21 A. No, Encore's still helping me. They come back and
22 do a few things.

23 Q. Okay.

24 A. As far as our substantial completion, it's done.
25 Little odds and ends, carpet, some ceiling tile; but, you

1 know, that's punch list stuff.

2 Q. So the building's substantially complete?

3 A. Yes, sir.

4 Q. And have they final invoiced you?

5 A. No, sir.

6 Q. Why not?

7 A. They know I can't pay it. I think they're working
8 with me. In fact, I know they're working with me.

9 Q. So there's other invoices that haven't been
10 submitted?

11 A. I don't recall the exact number where we are. I
12 know what the final is, and those are exact numbers of what
13 I've incurred. I don't -- they did not ask for anything in
14 advance when they started. So as I pay it, stuff that I've
15 done, out of courtesy, I think, or just sheer compassion.

16 Q. So on the windows, work hasn't started to replace
17 the window system, is what you're saying?

18 A. There's been preliminary work done, inspections.
19 We've had some window people come out and look at it. So
20 when you're talking about work, no nails have been driven
21 yet.

22 Q. So there's no invoice? Nothing's due on windows,
23 right?

24 A. No, sir.

25 Q. Is what I'm saying correct?

1 A. Sir?

2 Q. There's nothing due on the windows right now?

3 A. As far as the replacement of all the window system?

4 Q. Right.

5 A. I don't believe there is. I don't recall any.

6 Q. I want to show you P-12 -- 112 that's already
7 admitted. It's the Poole invoice. Show you that real quick.
8 So this is dated last week.

9 A. Okay.

10 Q. And Mr. Poole had been paid all along. When you
11 got this you realized there was an outstanding balance of
12 36,000?

13 A. When I got this?

14 Q. Yes.

15 A. I knew there was an outstanding balance.

16 Q. Well, so what's a bit confusing, we see the
17 balances here and this is dated in March. Had you been given
18 an invoice before March?

19 A. The relationship with Ricky and I is -- I mean,
20 Ricky's a good ole guy. Our community is pretty tight-knit.
21 He knew I was having trouble. In fact, the very first
22 invoice he sent me he says, "Hey, if you can't pay this, let
23 me know. I understand your -- the insurance company is not
24 cooperating." So the relationship that we have, until he
25 comes to me -- but I did not -- I knew there was an

1 outstanding balance. But knowing Ricky, I'm speculating, I
2 don't know if I can speculate up here, but I'm speculating he
3 just didn't do it knowing my situation.

4 Q. And so you did not have this final invoice until --

5 A. I don't recall.

6 Q. -- a couple days ago?

7 A. I knew I owed it.

8 Q. Okay. So you understood that there were questions
9 about the condition of the building before -- do you need a
10 break?

11 A. No, sir.

12 Q. Okay. And this has been introduced as the
13 Collisson report, D-16, if we can put that up. And we saw
14 that yesterday when Mr. Collisson -- I'm sorry, when we were
15 talking to both Mr. Collisson and Mr. Major. Do you recall
16 this?

17 A. I'm sorry, Mr. Wolff. I barely heard any of that.

18 Q. I apologize. That's my problem.

19 A. My hearing aids' battery went out.

20 Q. I understand. Do you recall seeing this when we
21 talked about it with Mr. Lock and Mr. Major, about the Grecco
22 report and the questions they had about the pre-existing
23 damages?

24 A. In this trial?

25 Q. Yes. Do you recall that?

1 A. I was here.

2 Q. Okay. Thank you. And I want to just take a quick
3 look at some of the pictures, and best way to do it is take
4 this off of here. Had you seen these photographs before? I
5 think this was in the first floor exterior, the wall
6 deterioration that was there before the hurricane.

7 A. I don't know. Oh, in the gym. I was not aware of
8 that because that's a repair from the outside. That's one of
9 the areas where they -- prior to me buying it, it was behind
10 the panels. The panels were removed.

11 Q. And they found damage?

12 A. Sir?

13 Q. And they found damage? Just trying to show that
14 there was damage behind those panels that had not been fixed
15 before the hurricane, right?

16 A. I see the stains. I don't know how much damage.
17 We'd have to look at the report. Stains don't necessarily
18 mean damage. It just means there was water at one point. It
19 was stained, and we repaired any --

20 Q. So this is -- if you look at the ladies room, you
21 can see when they pulled out the exterior and it showed that
22 it's rotted all the way through?

23 A. Absolutely. I believe there was four sheets of
24 plywood like that in the entire building that we replaced and
25 charged to the insurance. Anything else that we did was not

1 charged to the insurance. Total of four sheets of plywood on
2 a 15,000-square foot building.

3 Q. And here's this as well, another hole?

4 A. That's probably a sheet of plywood there.

5 Q. Excuse me?

6 A. That's probably a sheet of plywood.

7 Q. Okay. And --

8 A. You have -- you don't have to understand, I guess,
9 but --

10 Q. Well --

11 A. -- you have Sheetrock on one side, the exterior
12 panel on the other. You can't see that unless you start
13 tearing out every piece of Sheetrock and looking at it, which
14 Hurricane Laura allowed us to do that. And we fixed it when
15 we saw it and we charged the insurance company.

16 Q. And here's another one. I think this is --

17 A. I take that back. I've been misstating.

18 Q. I'm sorry. Misstating what?

19 A. Any damage like that we repaired.

20 Q. Well, Mr. --

21 A. I've been saying it's four sheets, but there was
22 four sheets of plywood that was charged to the insurance
23 company.

24 Q. That's what Mr. Major said.

25 A. That's what I believe.

1 Q. Well, I think -- so that we don't get confused, I
2 think he said, "He didn't charge four sheets. Everything
3 else he did charge."

4 A. I don't think that's accurate. I'm not sure of the
5 numbers. Here's my point. If it was rotted obviously before
6 the hurricane, it did not go on the insurance bill. It's
7 that plain and simple. I would not do that. I think they
8 call that fraud, and I'm not here to commit insurance fraud.

9 Q. No one's saying you're here to commit fraud. Just
10 trying to understand the extent of the pre-existing damage.
11 Right. And that's what these are showing. So we have that
12 clearly had rotted out. We have this here where the hole on
13 this side of the wall here, all of these one, two, three,
14 four, five all rotted out.

15 A. That's not -- I don't believe that's rot. Can you
16 show me where it documents that's rot --

17 Q. So --

18 A. -- as opposed to just past water stains where the
19 exterior has been repaired and they just -- if it was water
20 stains, there's no reason to repair it. If it's rot, repair
21 it.

22 Q. I mean, the jury can look at it if they want to.
23 They can ask for this exhibit. It's rotted all the way
24 through. You can see it.

25 A. Which one?

1 Q. Right here, sir. One, two --

2 A. Oh, okay.

3 Q. -- three, four, five. You can see --

4 A. I was looking at the top. I was looking at the top
5 one.

6 Q. You see it over here. That's six just on the
7 office one looking south. That's all rotted out.

8 A. Right. And that was all dry, meaning there was not
9 any ongoing rot. The exterior had been repaired on the roof,
10 wherever it was coming from. I know what water does to a
11 building. So it was either a previous repair by Mr. Book,
12 and in order to do that I believe you have to -- it's just
13 not as easy as pulling a sheet of plywood off. There's a
14 system that's over that.

15 Q. Cladding. Talked about that. What I'm trying to
16 say, there's damage that was there that did not get fixed.
17 That's what we're getting to. And it's well more than four
18 sheets of plywood. It's all around the building.

19 A. That was not made aware to me. There's nobody --
20 people could not have seen that. If somebody says, "Hey, you
21 need to go in there and do that," I would have.

22 Q. Okay. But it did not get fixed because you didn't
23 know about it, is what you're telling us. I'm just trying to
24 show here that there is evidence that there was ongoing rot
25 from leaking on the outside of that exterior you had, like

1 they talked about in the inspection report. Water leaked
2 into the building before the hurricane and was rotting the
3 walls.

4 A. That's not an accurate statement.

5 Q. Well, these are rotted through.

6 A. No. You used the term "ongoing rot." If there's
7 no moisture there, it's not ongoing; and there was no
8 moisture there.

9 Q. How do you know?

10 A. The moisture map. I saw Jeff Major test it with
11 his tools, and he would be better at describing all that.
12 I'm kind of shooting from the hip here.

13 Q. I don't want you shooting from the hip. Really,
14 I'm not trying to argue with you. I thought this was --

15 A. Well, I'm not arguing --

16 Q. I'm not saying --

17 A. -- just pointing out inaccurate statements. And we
18 saw it. We fixed it at my expense.

19 Q. Okay. All I'm trying to say, at D-16, when we had
20 the structural engineer Mr. Collisson go out, he took
21 pictures and showed there was evidence of ongoing problems,
22 right?

23 A. If that's what his report said. That's not -- it
24 wasn't ongoing.

25 Q. All right. You understand from the inspection

1 report that one of the concerns was that the exterior was
2 leaking. I'll show this to you. Don't want you to have to
3 play a guessing game. Exterior siding, the wood panels have
4 gaps at seams, cracks, damaged areas, evidence of possible
5 moisture intrusion. Recommend evaluating by licensed
6 contractor and repair and replace. Right?

7 A. And we did areas that were obviously -- best way to
8 tell if it's leaking, I'd go over there every time it rained
9 and walked the building. I was on top of it. Find an area
10 that's leaking. I contacted a contractor. Depends on who
11 was available at the time. They come out. They fix it. I
12 did not tear an entire wall out or entire exterior wall out
13 to see what it did. If I stopped the water and everything's
14 okay, I was okay with that.

15 Q. Okay. You know --

16 MR. WOLFF: Excuse me. D-47?

17 MS. BROWN: Can we see it?

18 MR. COX: Can I see it? No objection.

19 MR. WOLFF: Offer, file, and introduce.

20 THE COURT: It'll be admitted.

21 BY MR. WOLFF:

22 Q. Okay. I asked you about whether you were trying to
23 get things fixed to make this a better space. And then I
24 asked Mr. Major yesterday was there an engineering report
25 about the exterior, the cladding, and he said, "No, I don't

1 know anything about that." You remember that testimony?

2 A. Yes, sir.

3 Q. Okay. And he said that if there been an
4 engineering report he should have sent it to Scottsdale. You
5 remember that testimony, too?

6 A. I don't recall that exact statement.

7 Q. Doesn't matter whether --

8 A. Right.

9 Q. -- you or I remember it. It's whether the jury
10 does.

11 A. Right.

12 Q. Okay. So here we'll see down at the bottom, this
13 is Evan that's with Encore, right?

14 A. Evan, yes, sir.

15 Q. "I've attached an engineering scope of work higher
16 than what he originally told me. I think we can talk him
17 down. The RFP" -- I'm saying that's request for proposal --
18 "I sent them shows all the bad parts of the building. So
19 once they see there is a lot of good plywood and framing on
20 the building, I think the price will go down." And then the
21 question is asked up there, "Do you think this engineering
22 report will help our cause to get the insurance company to
23 pay for siding replacement?" You see that?

24 A. The highlighted area?

25 Q. Yes, sir.

1 A. Yes, sir.

2 Q. You're on that e-mail?

3 A. Yes, sir.

4 Q. And so is Mr. Major?

5 A. Yes, sir.

6 Q. And he was the one working for you and working with
7 the insurance company?

8 A. He who?

9 Q. I'm sorry. Jeffrey Major.

10 A. Yes, sir.

11 Q. And that report was not provided to the insurance
12 company, right?

13 A. I don't recall. I think just what it's saying is
14 how do we tackle this. I'm assuming that was an Encore
15 higher invoice.

16 Q. Well --

17 A. Even looks like he's in there trying to, hey, let's
18 see how we can get by as cheap as we can, not cheap, let's
19 make sure we take care of business but don't overdo it.

20 MR. WOLFF: So D-44 on the list.

21 MR. COX: No problem. No objection.

22 BY MR. WOLFF:

23 Q. This is an e-mail and it's a number of pages, but
24 this is an e-mail from you. I'm sorry. It starts with Evan
25 to you, and this is in late September. You have an

1 engineering team -- "Good morning, Joey. How did the meeting
2 go with your engineering team?" So you had an engineering
3 team outside of Encore?

4 A. I do not recall that. I did not have an
5 engineering team. The only thing that we called an
6 engineer -- that I contacted an engineer, somebody local, was
7 to determine what direction we would go with the roof. We'd
8 talked about a pitched roof. We talked about a flat roof.
9 It was all seeing if there was one -- a less expensive option
10 since I wasn't confident that I would get paid for it, but
11 even a better option. How can we improve this building while
12 we're at this point. But I never hired an engineering
13 group --

14 Q. Well --

15 A. -- outside of that, that I contacted. Never even
16 got an invoice from them because they --

17 Q. So Encore, that's Aden (sic) Monheiser, right?

18 A. Yes, sir.

19 Q. He's writing to you. "How did the meeting go? Was
20 he able -- was the engineering team able to produce a detail
21 for your exterior siding issue?" Right. And then you write
22 back later that day, two hours later, you say, "We are still
23 waiting on the engineer." You see that?

24 A. Yes, sir. The roof ties into the side. Again, the
25 only thing I can -- I'm speculating and I'm not -- I have no

1 reason to -- I have no reason to hide anything. Give me some
2 more detail. If you say, hey, here's the engineering group
3 specifics, I don't recall anything else.

4 Q. These are your e-mails, sir. It's not anything we
5 would have. You say, "Is an engineer interested in taking on
6 exterior wall cladding?" Mr. Monheiser writes you at 10:34
7 that same day and then you come back five minutes later,
8 "This is what I -- this is what I like communicating. My
9 plate is full and it's hard for me to keep up. I don't want
10 to hold up the process. I like the idea of the ST0 rep
11 doing." What is that?

12 A. That's -- I think that's slang, ST0. I think
13 that's --

14 Q. ST0? I'm sorry. I didn't mean to interrupt.

15 A. I think it's ST0. You can tell my typing. That
16 first was supposed to be "This is what I like communicate"
17 but "why I like." I got my typos. No, that's a type of
18 siding.

19 Q. Yeah, that's what we're all talking about. There
20 was an engineer, apparently an engineering team. They were
21 going to get a report. You're going, "I think our engineer
22 may be getting an architect to look at that design for that
23 exterior cladding, too." Right?

24 A. I'm not aware -- I haven't seen anything in there
25 where it said we actually got a report. There may have been

1 communication with them but -- I'm trying really hard to jog
2 my memory, but there's no engineer outside of the one that I
3 got personally to come in and talk about the roof. And then
4 I know they were talking to different people, different
5 siding groups, about what's our best option to do it
6 efficiently and effectively with what we had.

7 Q. And do you recall BECI, an engineering group, that
8 actually issued a scope of work for that exterior cladding?

9 A. BECI?

10 Q. BECI.

11 A. It sounds familiar.

12 Q. And you don't recall whether you-all got a report?

13 A. I don't recall that, no, sir.

14 Q. Now, we talked about the work out there. You were
15 working with the GSA coordinating, getting that lined up.
16 Encore was out there doing some preliminary things. Right?

17 A. Yes, sir.

18 Q. And Encore was not licensed to do work as a
19 contractor until November 19th; isn't that right?

20 A. That's my understanding. I think the records
21 are --

22 Q. Okay.

23 A. Nobody's disputed that.

24 Q. You've seen that the actual license didn't issue
25 until that time, correct?

1 A. Yes.

2 MR. WOLFF: And I'll offer D-64 which is the
3 certified copy of the board letter.

4 MR. COX: What board letter?

5 MR. WOLFF: The contractor board.

6 MR. COX: No objection.

7 THE COURT: It'll be admitted.

8 BY MR. WOLFF:

9 Q. It's a certified copy. Now, we asked to get this
10 to confirm. It says Encore holds a commercial license which
11 was issued on November 19th, 2020.

12 A. Okay.

13 Q. And you understand that Encore couldn't have done
14 any work before then, right?

15 A. No construction work. I think there's some
16 hurricane provisions that they can do some stuff, and he's
17 very aware of that. They're very reputable. He's not going
18 to jeopardize his livelihood and part of his business to lose
19 it over getting it started. I would not have signed a
20 contract -- I didn't sign a contract before that date anyway
21 and would not have because I could not commit over another
22 million dollars after already half a million that I
23 committed.

24 Q. Well --

25 A. That would have put me at \$2 million. Just what

1 I'd already paid for and the new contract put me at
2 2 million.

3 Q. Well, the question was, sir, he couldn't have
4 started the repair work before November 19th. Encore
5 couldn't even have started it. So you couldn't have incurred
6 any bills, wouldn't have been owing anything, replacement
7 wouldn't have even started until after November 19th, 2020,
8 right?

9 A. Technicality, they could not have.

10 Q. It's a legal requirement.

11 A. Well, it's technical. Yeah, technical. I'm not
12 dismissing that. I'm sorry. Maybe that's the wrong word.
13 Correct. By law, I guess, they could not have started except
14 for there's any hurricane disaster provisions. I can't quote
15 those.

16 Q. Right. But in terms of the big repair work, that
17 couldn't even have begun. And then it was after that that
18 you signed the Encore -- well, first off, you told me before
19 you didn't realize he wasn't -- Encore wasn't licensed,
20 correct?

21 A. I didn't recall it at the time when you asked me.

22 Q. Okay. You do recall it now?

23 A. Yes, sir.

24 Q. Okay. Mr. Major recalled telling you that?

25 A. Yes, sir. And the fact of the -- if I may say that

1 if I didn't have the money it wouldn't have started. It was
2 that early. I waited till the midnight hour to sign that
3 contract.

4 Q. Okay.

5 A. Knowing the amount of time I needed to get GSA in
6 the building, which 240, whatever that number was that we
7 had, I got it approved and accepted with five hours left on
8 my deadline. So I -- and we were the first federal building
9 to get back open in the area. So I think we did a pretty
10 good job doing what we did, managing what we had.

11 Q. Okay. That's an important point. Lake Charles is
12 devastated. We realize there's a dispute and a fight between
13 Eaux Holdings and Scottsdale, but you hit it right there.
14 You and that building got up and going before most anyone
15 else.

16 A. Because Encore's good.

17 Q. Okay.

18 A. And if I would have got the money in a timely
19 manner, I would have looked at another option. I was not
20 given that opportunity because I didn't have the money so I
21 wasn't spending money that I didn't have. Trust me, I would
22 not have got the money -- if you look at all my
23 distributions, every time that I got a check from the
24 insurance company --

25 THE COURT: Hold on, Mr. Odom.

1 MR. WOLFF: I'm going to ask the witness be a
2 little more responsive. I'm asking --

3 THE COURT: You're objecting to the responsiveness
4 of the answer.

5 MR. WOLFF: Yes, Your Honor, I am.

6 THE WITNESS: I apologize.

7 THE COURT: That's okay. Simply answer his
8 question and then you'll be given the opportunity to
9 explain your answer, but I think you've gone a little
10 bit beyond explanation right there.

11 MR. WOLFF: Thank you, Your Honor. This is the
12 Encore contract, D-124.

13 MR. COX: No objection.

14 BY MR. WOLFF:

15 Q. And just so that the jury understands, there's a
16 couple things I want to show you here. The time of
17 performance is set forth in this contract. It started on
18 November 24th, 2020. You see that?

19 A. I see a highlighted area in here that says
20 commitments occurred on November 24th, 2020.

21 Q. Right. And even though you signed it December 20,
22 the work had already started November 24th, right?

23 A. I'm not sure of the details.

24 Q. That's what it says here.

25 A. I think that's because we had a trust. We'd built

1 a trust. He knew that I would honor it regardless and do my
2 best --

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: I mean, you can explain your answer,
5 Mr. Odom.

6 THE WITNESS: Okay.

7 A. And that was it. We had a trust. You know, we
8 lived through this and were down there and we got to know
9 each other.

10 BY MR. WOLFF:

11 Q. It's a contract, right?

12 A. Trusted him. He trusted me. And --

13 Q. It's a contract, right?

14 A. It is a contract.

15 Q. And that's your signature?

16 A. Did we break the contract?

17 Q. Excuse me?

18 A. Did I break the contract?

19 Q. I have no idea.

20 A. Okay.

21 Q. This is between you, Eaux Holdings, and the
22 contractor, Encore?

23 A. Yes, sir.

24 Q. Is that your signature?

25 A. Yes, sir, it is.

1 Q. Okay. So by this contract you set a 1.36 subject
2 to additions or deductions, right?

3 A. I'm not sure where you're reading from.

4 Q. Work subject to additions and deductions?

5 A. Okay. Yes, sir.

6 Q. And the first payment was 100,000 within seven days
7 after the contract, right?

8 A. Payment -- yes, sir, that's what it says.

9 Q. And Scottsdale had already given you by that
10 time -- this is D-161. Scottsdale had already given you by
11 that time 468,000?

12 A. Yes, sir. At that point that didn't even cover
13 what I --

14 Q. Sir, please. At that time --

15 A. I'm just trying to state my situation.

16 Q. And I apologize.

17 A. I'm sorry.

18 Q. I'm just trying to get us out and move on so they
19 can come back and --

20 A. Their lunchtime, the jury's lunchtime.

21 Q. Yeah. Okay. So you had 468 from Scottsdale by
22 that time. And then a few days -- so this was December 27th.
23 You would have owed a hundred. You'd already been paid 468.
24 And then a week or so after that you got another 177 from
25 Scottsdale, right, January 8?

1 A. Yes, sir.

2 Q. So I don't have a calculator, but looks like it's
3 over 600,000?

4 A. That's late.

5 Q. Is that right? I should have Somer's calculator
6 here. Yeah, so that's 650, roughly.

7 A. Well, the total now is 1.8. I'm sorry.

8 Q. It's in process. You didn't owe. They hadn't done
9 the work. You didn't owe more than a hundred thousand at
10 that point in time, on December 27th. You didn't owe -- on
11 this contract you didn't owe more than a hundred thousand?

12 A. Yes, sir.

13 Q. And then --

14 A. I understand what you're saying.

15 Q. Right. And there were three phases of this, and we
16 can go through it with Mr. Stuck and I think it'll be more
17 time effective; but you didn't owe money until they issue a
18 payment demand pursuant to this contract, and that's when you
19 would owe it?

20 A. Payment demand --

21 Q. Under the phasing of the contract.

22 A. I wasn't finished. Payment demand to who?

23 Q. To you, to Eaux Holdings.

24 A. Invoice -- the contract was a hundred thousand by
25 contract.

1 Q. Right. And then there were phases of this contract
2 that you would pay as they completed the work, right?

3 A. If it says phases.

4 Q. And Scottsdale paid you before the work was
5 completed, because you said the final completion was in
6 August --

7 A. I don't --

8 Q. -- substantial completion?

9 A. I don't recall that.

10 Q. I thought you told us that's when it was.

11 A. I may have.

12 Q. The punch list items after that. All right. Then
13 in May, before you owed the money to Encore, you were given a
14 million one, another million one, so that totalled 1.78, 79
15 million?

16 A. Encore was working --

17 Q. Is that correct? That's my question.

18 A. Encore was working with me, and once they invoice
19 interest starts.

20 Q. Okay.

21 A. My guess is that even that hundred thousand that I
22 paid up front didn't cover what it needed to cover.

23 THE COURT: He can explain his answer, Mr. Wolff.

24 MR. WOLFF: I just need an answer first, if I
25 could.

1 THE COURT: He's answering your question.

2 A. Pertinent information that, I mean, these people
3 were working with us, working with --

4 BY MR. WOLFF:

5 Q. So --

6 A. I -- still the devastation that we had -- I'm
7 sorry. I got emotional a second, not from that but I
8 envisioned the hurricane, when I drove in and what I'm
9 working with and trying to repair. And people came down to
10 help us. They were working with us. They weren't fighting
11 us. They were working very well with us and considerate.

12 MR. WOLFF: Shall we take a break; or what do you
13 want to do, Your Honor?

14 THE COURT: Sure. Have you got -- we can go ahead
15 and take our lunch break if you would prefer. Is this a
16 good stopping point?

17 MR. WOLFF: It's fine.

18 THE COURT: I'm assuming you got some more you need
19 to do.

20 MR. WOLFF: I do and I'll move through as --

21 THE COURT: No, no. No one's trying to rush you.
22 If you told me you got another 10, 15 minutes, I'll let
23 you finish. But if you got more than that, we'll go
24 ahead and take our break.

25 MR. WOLFF: I can't guarantee 10 or 15 minutes, but

1 I will work --

2 THE COURT: I appreciate that. And I'm sure
3 Mr. Cox will have some redirect. So, Lisa, is our
4 jury's lunch --

5 MS. LACOMBE: All laid out.

6 THE COURT: Okay. Your lunch is here so great.
7 Great time. We'll take our lunch break. We'll come
8 back at -- what time y'all want to come back, 1:00 or
9 1:15? 1:15 in case you have to go -- okay. We'll come
10 back at 1:15. All rise for the jury.

11 (Jury exits courtroom.)

12 THE COURT: Anything we need to discuss before the
13 break?

14 MR. COX: No, sir.

15 THE COURT: Very good, then.

16 (Recess is taken.)

17 THE COURT: Before I bring the jury in, let's -- do
18 we have a couple issues we need to discuss?

19 MR. WOLFF: Just one on this witness. I've alerted
20 Ms. Brown. I'd like to address that with you.

21 THE COURT: All right. Lay it on me.

22 MR. WOLFF: Okay. So in the deposition of the
23 30(b)(6) I asked Mr. Odom about the maintenance records
24 and he said he couldn't really recall but he'd go check.
25 And I have put a placeholder in there. And I said,

1 "Look, I'm going to attach as Exhibit 4 a blank piece of
2 paper that's the maintenance records and you'll please
3 go check and if you have any" --

4 THE COURT: You'll attach them as Exhibit 4.
5 You'll supplement. Is that what you were doing?

6 MR. WOLFF: Right. Right.

7 THE COURT: Okay. I got it.

8 MR. WOLFF: And so we followed up with Ms. Brown.
9 And I think on November 2nd she writes back, "On the
10 Exhibit 4 maintenance or repair records, including
11 invoices and/or checks," she says, "none to our
12 knowledge."

13 THE COURT: Okay.

14 MR. WOLFF: So I'm relying on that.

15 THE COURT: I would.

16 MR. WOLFF: I did. That's where we are. I would
17 just like to say that -- however we want to put it in
18 there, that --

19 THE COURT: Let me ask you this. So you still
20 didn't get any maintenance records, is what you're
21 telling me.

22 MR. WOLFF: Right. There aren't any.

23 MS. BROWN: Correct.

24 THE COURT: There aren't any. So what are we
25 doing?

1 MR. WOLFF: So he's up here acting like he never
2 did anything. He said, "Well, I'll have to check my
3 records." He said in the deposition that he would go
4 check his records, and then he goes --

5 THE COURT: I don't remember what he said a minute
6 ago about that. Did he say he didn't check or he did
7 check?

8 MR. WOLFF: He'd have to check. That doesn't do
9 me --

10 THE COURT: I think this is more -- Mr. Wolff, I
11 think this is more impeachment, that, you know, you
12 asked him the question. Confront him with his
13 deposition testimony and say, "Well, in your deposition
14 you said this. Now you're saying today you never
15 checked." I mean, that's what, to me, this is all
16 about. It goes to his credibility.

17 MS. BROWN: May I also say, though, I don't think
18 that my e-mail is evidence, my statement --

19 MR. WOLFF: Oh, I don't --

20 THE COURT: I didn't take that at all.

21 MS. BROWN: He showed me the e-mail.

22 THE COURT: I guess I'm trying to understand what
23 you're asking me.

24 MR. WOLFF: I'm asking just that if they can talk
25 with their witness however they want, just say, "You

1 were instructed to do it. You did it. You reported
2 back you didn't have any," and just basically get a
3 stipulation to that effect. Or I can impeach him.

4 THE COURT: No. What I think -- unless you want to
5 stipulate. Y'all can stipulate to whatever. Y'all can
6 stipulate that the moon has got people running around
7 with green wings. I don't care.

8 MS. BROWN: I think he's already asked the witness.
9 I don't know what we would stipulate to. I don't really
10 understand what --

11 THE COURT: I don't think you're going to get a
12 stipulation out of Ms. Brown. That's what I take right
13 there. Is that a pretty accurate assessment of the
14 situation?

15 MS. BROWN: I might stipulate to some things but
16 probably not that.

17 THE COURT: Here's what I suggest, Mr. Wolff. I
18 hear where you're coming from. So what I think -- I'm
19 not telling you how to do your case. You're an
20 experienced trial attorney. I would confront him with
21 his deposition testimony on it, ask the question, show
22 him his depo, you said this, now today you're saying
23 this, where are we at on it. That's only thing I think
24 you can do with it. It goes to credibility. The jury's
25 going to weigh his credibility at the end of the day on

1 all this.

2 MR. WOLFF: I understand.

3 THE COURT: I don't think the e-mail -- she's not
4 going to stipulate. It is what it is.

5 MR. WOLFF: Is what it is. I got it.

6 THE COURT: I think you need to ask him and get it
7 on the record.

8 While we don't have the jury in here, I want a
9 preview of what the heck you're talking about, Mr. Cox,
10 about this other witness, what you were bringing up to
11 me as we were leaving. And, you know, maybe my blood
12 sugar was low. I wasn't in the mood for it at the time.

13 MR. COX: He's a real estate appraiser.

14 THE COURT: What's his name?

15 MR. COX: Mr. Duplantis.

16 THE COURT: Okay. There was no -- I looked. There
17 was no motions pretrial on him that I recall.

18 MS. BROWN: The reason is because at the time we
19 also had a real estate expert. This is before we
20 dismissed the 1973 claim. They were relative to that
21 claim.

22 MR. COX: Correct. And his opinion is the property
23 is now worth more but that none of that is relevant to
24 what was owed to fix the building.

25 THE COURT: That's a good point. What say you,

1 Mr. Wolff?

2 MR. WOLFF: I'm going to let --

3 THE COURT: And I'll tell you why. I'll give you a
4 little heads up on my mindset on this. I had hurricane
5 damage. Okay. I got a new roof on my house. I got a
6 new brick wall. I got a new paint job. To me, my house
7 is worth more today, too, than it was before the storm;
8 but I certainly don't understand how any of that would
9 be relevant to the behavior or actions of my insurance
10 company in paying my claim.

11 MS. PAYNE: Your Honor --

12 THE COURT: The end result of me getting my repairs
13 increased the value of my home.

14 MS. PAYNE: And plaintiffs have made the theme of
15 their case that this was a huge investment, it's an
16 investment property, and that we haven't --

17 THE COURT: 2 million bucks is a huge investment.

18 MS. PAYNE: -- and that we haven't paid the
19 replacement cost value and that there's still work left
20 to do. The value of the building, they put this at
21 issue, the investment. I mean, that's what they keep
22 saying to the jury, that it was a huge investment. So
23 the value of the building is relevant and it's relevant
24 to whether --

25 THE COURT: To what?

1 MS. PAYNE: -- Scottsdale has paid the replacement
2 cost value because they say there's still work left to
3 be done, you know, that there's still money owed under
4 the policy. But the building is done. It's fixed.
5 It's worth more now than it was worth before, and we've
6 paid the replacement cost value.

7 THE COURT: I'm thinking. Mr. Cox.

8 MR. COX: We stipulate it's a big investment, Your
9 Honor --

10 THE COURT: I mean, I get it.

11 MR. COX: -- but the value --

12 THE COURT: I'm going to be honest with you, this
13 whole comment about it was a big investment, it was. It
14 was a \$2 million investment. My home's a big
15 investment. And I think I take that testimony as more
16 just background, contextual, that this was a big
17 investment for Mr. Odom. I don't think it really went
18 to the heart of anything.

19 MS. PAYNE: But in their opening statements and in
20 the testimony, it's a big investment, they expect the
21 investment to be protected. The investment's protected.
22 The goal was to make it a better space. And he, in
23 fact, did make it a better space. And the value of the
24 building is relevant to whether Scottsdale paid
25 replacement cost value, because they're still disputing

1 that and saying that work isn't done. He's going to say
2 the condition of the building now, and it's in a way
3 better spot than it was pre-storm.

4 THE COURT: I'll be honest with you, I'm still not
5 really seeing the relevance of this, what it has to do
6 with whether or not money is still owed to the insured
7 in this case, whether or not any of the payments were
8 late and constitute bad faith under the Statute 1892.
9 So what if the building's worth more money.

10 MS. PAYNE: But the replacement cost value is at
11 issue here. And they say that there's work that still
12 needs to be done, and we want to show the condition of
13 the building and the value of the building because we
14 say the work is done.

15 THE COURT: I'll be quite honest with you, I really
16 have not heard much evidence about details about what
17 work's left to be done, how much this work is to be
18 done, how much it's going to cost. I haven't heard any
19 of that testimony. I really haven't. Maybe I missed
20 it, but I haven't heard it. I don't know what the
21 jury's going to do because I haven't heard any of that
22 evidence. So that's why I'm kind of a little befuddled
23 by this whole argument about the building being worth
24 more and the replacement cost.

25 I'll tell you another thing. Y'all get ready for

1 this in my charge conference. I'm taking out all those
2 charges on actual cash value and replacement cost
3 because, you know why, I haven't heard any evidence
4 before this jury for them to consider or delineate out
5 actual cash value from replacement cost value. There's
6 no evidence for this jury to be able to delineate any of
7 that.

8 MR. WOLFF: I don't agree, Your Honor.

9 THE COURT: Maybe you're going to put some on, but
10 I haven't heard one piece of evidence.

11 MR. COX: Well, we had --

12 THE COURT: I've heard y'all talk about it. I've
13 heard y'all go replacement cost, actual cash value; but
14 no one has sat here and go this, this, this, this. I
15 haven't seen -- it hasn't been delineated out for them
16 to be -- because they have to be able to distinguish
17 between the actual cash value that's been paid and the
18 replacement cost, and I don't think anybody's done that
19 yet.

20 MR. WOLFF: The policy is in and that does it.

21 THE COURT: That just says what's supposed to be
22 done. What I'm telling you is I haven't heard any
23 evidence about where we are on all that.

24 MR. WOLFF: In applying this particular claim, is
25 that what you're talking about, that is --

1 THE COURT: Here's the thing. Y'all paid him
2 1.7 million bucks.

3 MR. WOLFF: Correct, 1.8.

4 THE COURT: 1.8. Round up. Whatever. Is it
5 actual cash value you paid? Is it replacement cost
6 value? What is it?

7 MR. WOLFF: It's replacement cost value.

8 THE COURT: Okay. Y'all agree to that?

9 MR. COX: The policy says they owe actual cash
10 value first, then replacement cost.

11 THE COURT: That's my point. Y'all got all these
12 charges on this; but no one has delineated which
13 payments have been made, actual cash value payments or
14 replacement cost payments. Where are we at?

15 MR. WOLFF: Collisson --

16 THE COURT: Right now the jury ain't going to hear
17 any of that.

18 MR. WOLFF: We have evidence in the record through
19 Lock and through Major that Collisson with Grecco came
20 in and set an actual cash value. They don't agree with
21 it but those are the two payments, the 250 and -- I
22 don't have the chart right here. That represented
23 actual cash value. That evidence is in the record. And
24 where you reach that is you take the replacement cost
25 value less depreciation and then you get actual cash

1 value, and that is in the record.

2 THE COURT: That's my thing. I haven't seen any of
3 that evidence about the depreciation. I don't know how
4 this jury is going to go back there in this room and
5 deliberate over what is really owed, if anything, maybe
6 they'll decide nothing's owed, and how they're to
7 categorize it. I haven't seen the evidence. We were
8 talking about this during the break, were we not, Toni,
9 trying to figure out.

10 MR. WOLFF: It's Collisson's report and
11 recommendation and it's in the claim notes, how it was
12 calculated. So that evidence is in there. There was a
13 replacement cost value set by Grecco and then
14 depreciation was applied and he recommended an actual
15 cash value payment and that was made.

16 THE COURT: Okay. Actual cash has been paid. Why
17 am I charging on replacement cost? Have they been paid
18 replacement cost? Are you saying you're owed
19 replacement cost? I have not heard any evidence that
20 you still owe me this and it'll be replacement cost. I
21 haven't heard that.

22 MR. COX: Scottsdale has never broken down what
23 their payments are, whether they're ACV payments or RCV
24 payments; but there has been a lot of testimony about
25 what is owed under the policy --

1 THE COURT: Exactly.

2 MR. COX: -- ACV first then RCV. But they've just
3 never said what the payments were.

4 MS. BROWN: Your Honor, I think to the extent we
5 have the costs incurred, those are all replacement cost
6 numbers. The only remaining ACV number that needs to be
7 paid is the windows. The rest is the replacement cost,
8 and it's going to be over the policy limits.

9 THE COURT: I'm going to honest. Look, I'm just
10 going to tell you. I hate to be like this; but if I
11 don't understand it, they certainly don't understand it.
12 I'm telling y'all this from both sides. I really don't
13 understand either one of y'all's case to a great extent.
14 I don't know where they're going. It's not my job to
15 figure out where they're going. I'm just telling you
16 it's not clear on how these payments are categorized and
17 where we are. I really don't see it. And I'm trying --
18 it's my job when I charge the jury is to charge them on
19 the law based on the evidence that's been presented
20 during the trial. And we were talking about -- because
21 y'all had sections upon sections of charges about actual
22 cash value, replacement cost. And I'm not reading the
23 policy. I'll tell you that. I'm not reading the policy
24 in my charges but -- I'm not doing it.

25 MR. WOLFF: Of course not.

1 THE COURT: There was a bunch of charges you got
2 whole sections of the policy in there. I'm not doing
3 that. I'm sitting there going right now I don't hear
4 any evidence, really, that's definitive on any of this
5 so I can charge the jury on it.

6 MR. WOLFF: Well, Your Honor, so the contract is
7 the law between the parties --

8 THE COURT: It is.

9 MR. WOLFF: -- and the contract calls for payment
10 of actual cash value. And then if you move to repair,
11 then it needs to be paid as those repairs are made. So
12 that's the law there. There is evidence in the record
13 that there was an actual cash value calculated by
14 Collisson. It's in the claims notes. It's in the
15 testimony. It's been established.

16 THE COURT: You calculated an actual cash value;
17 but the problem is what we're here to talk about and
18 what the charges are asking is for me to charge the jury
19 in the damage section about actual cash value,
20 replacement cost, what they all mean. You may have
21 something in there that they calculated it that way; but
22 how are the payments being made, how are they
23 categorized.

24 MR. WOLFF: So the actual cash value was paid early
25 on.

1 THE COURT: How much? The 250? Is that it?

2 MR. WOLFF: 250 and 218, and that total is whatever
3 that is. \$468,192.53 actual cash value of the damages.
4 They don't agree with that. That's for the jury to
5 decide. I think we're headed for very clear error if
6 the policy isn't applied and they just do a replacement
7 cost. They got -- if the actual cash value tender was
8 insufficient, then the jury decides that. But we're
9 moving along. We can't be responsible for repairs until
10 they're made and owed. And the evidence is going to
11 show that as they moved along, and that's what Mr. Stuck
12 is going to do, we were paying.

13 THE COURT: I'll give a charge on the definition of
14 actual cash value and replacement cost value, but I'm
15 not -- y'all had five pages on this and I'm not reading
16 them five pages. I'm going to give them a simple
17 straightforward --

18 MR. COX: That's all we want, Judge, a very simple
19 definition of each.

20 THE COURT: But I'm going to be honest, there's no
21 way for me -- y'all can object and take it to the Fifth
22 Circuit. I don't care. There's no way that I can put
23 on the verdict form under -- if they decide some money's
24 owed, whether -- it's just going to be a line. I mean,
25 we're not getting into that on the verdict form.

1 There's no way. There's been no evidence to delineate
2 that out for them. You agree?

3 MR. WOLFF: Do not. We'll --

4 THE COURT: I'm sorry. There's been no evidence
5 breaking that down, and I don't know how you expect the
6 jury to be able to break it down when they haven't been
7 given the evidence to break it out.

8 MR. WOLFF: They have. It's in the claims notes.
9 It's in evidence. It calculates it by dollar and cent.
10 It's a precise calculation. We'll get that. I mean,
11 we'd do that in the charge conference. We'll have that
12 ready for you. That calculation is in there.

13 THE COURT: I'm not going to complicate this
14 verdict form. I'm telling you right now it's going to
15 be simple, it's going to be straightforward, and it's
16 going to be easy for them to either yes or no on some of
17 this. But I don't see it. I haven't seen the evidence
18 where it's been itemized out for them where they can
19 delineate it.

20 MR. WOLFF: It's in there. We'll have it
21 highlighted and show it.

22 THE COURT: Y'all are some very good trial lawyers.
23 I'm anxious to hear your closing arguments because I
24 think y'all got some really -- y'all got to do some
25 explaining to this jury because -- I'm just giving you a

1 little heads up because I'm sitting up here going I
2 don't even understand where y'all -- both sides. I
3 don't understand where either side is, really, on some
4 of this. I think it's really been not very clear. Like
5 I said, if I don't understand it, y'all all losing.

6 MR. WOLFF: Well, we haven't put our case on yet.

7 THE COURT: No, you haven't. I'll give you that.
8 I'm just trying to tell you, though.

9 MR. WOLFF: I will say it's a two-step process.
10 The actual cash value, which I will represent to you it
11 is calculated, it is in the record, there was testimony.
12 Then the question becomes if they move forward with
13 repairs, are we paying timely as they make those. And
14 the evidence is going to be yes, absolutely.

15 THE COURT: We'll see.

16 MR. WOLFF: We're going to put on our case. Can
17 we --

18 THE COURT: Enlighten me. That's great. I'm
19 waiting.

20 MS. BROWN: Your Honor, I would suggest that this
21 conversation we're having here is exactly why
22 Mr. Duplantis' testimony is not only irrelevant but also
23 potentially confusing and misleading to the jury.
24 Market value is not one of the values they're going to
25 be asked to --

1 THE COURT: Yeah, I'm still trying -- we got
2 sidetracked. That's my fault.

3 MR. WOLFF: If we can, there was a time to file
4 this motion. It was a long, long time ago. We're
5 prepping right now and they dropped this on us, and this
6 is the kind of -- I don't want to say trial by ambush,
7 but they had every opportunity to make this objection
8 and they didn't make it until today. And this is --

9 THE COURT: Well --

10 MR. WOLFF: -- Chelsea's first witness ever. She's
11 got him ready. He's flown in from Texas or come in from
12 Texas.

13 THE COURT: If I don't allow it, she can proffer it
14 and she still gets to do it.

15 MS. BROWN: To be clear, it's not a *Daubert*
16 challenge --

17 THE COURT: It's a relevance challenge.

18 MS. BROWN: -- and it wasn't ripe until the
19 evidence was in.

20 MR. WOLFF: The evidence isn't in yet. We haven't
21 put our case on yet so can we --

22 THE COURT: Yeah, I'm going to let you put your
23 case on and I'll decide when you get time. You're going
24 to set it up, I guess, or lay the foundation for it.
25 I'm not ruling on it right now. I'm trying to

1 understand a little bit better, you know, why it is
2 relevant. I'm still kind of mystified by why it's
3 relevant.

4 MR. WOLFF: Is there a memo that was filed?

5 MS. BROWN: It wasn't --

6 THE COURT: I haven't read it. I'll be fair to
7 both sides. I don't want to see it because this is an
8 evidentiary issue. It's relevance. It's straight out
9 of the hornbook almost. Okay. I've just got to decide
10 whether or not it's relevant to the case based on how
11 the case has been presented. Yeah, there's been some
12 statements it's a big investment; but that alone does
13 not set up -- that to me was more background, contextual
14 kind of testimony than it was evidentiary testimony.

15 MS. PAYNE: Your Honor, if plaintiffs get
16 contextual testimony to set their stage, we ask for the
17 same thing in context of this big investment, where is
18 it now, how is Mr. Odom doing now, since all we've heard
19 this whole trial is how big his investment is, how bad
20 it was for him, how this was terrible. Where is he at
21 now is in a better spot. That's what we want to show.

22 MR. WOLFF: The building as-is is worth way more
23 than it was and there is a substantial --

24 THE COURT: See, I think that's very prejudicial in
25 some regards because just because the building's worth

1 more has nothing to do with whether or not you owe him
2 more money or you owe him penalties and bad faith. So
3 what. My house is worth more now after I made all my
4 repairs. I just don't see the relevance in it other
5 than you want to prejudice the jury against him. I
6 mean, to me it's very prejudicial to say it's worth more
7 now, he's got a better building. Yeah, he's got a
8 better building. He made a repair to it. He got a new
9 roof on it. That's why I use my house. I had a
10 20-year-old roof. I got now a one-year-old roof. It's
11 worth more. Doesn't have anything to do with my
12 insurance claim.

13 MR. WOLFF: Well, can we -- we hear where you are.
14 We'll revisit after we put on evidence and see if --

15 THE COURT: Yeah. If you can -- look, I'm not
16 totally ruling yet. I'm just telling you where I'm kind
17 of leaning. If you're going to set it up, I'm going to
18 need some foundation for it, is all I'm saying. On the
19 thing -- I'll have to mull over this replacement cost
20 thing a little bit more. I'm just telling you, it's not
21 clean.

22 MR. WOLFF: It may not. Clear as mud.

23 THE COURT: I want to see what y'all put in
24 evidence on that. I mean, it must have been put in
25 evidence with a lot of other things. I don't remember

1 much testimony on it, to be honest with you. I remember
2 it being mentioned, oh, there's actual cash value and
3 there's replacement; but what I'm saying is I've never
4 seen testimony about we made this payment, they made the
5 repairs, now we owe them the replacement cost now. I
6 haven't heard that kind of testimony. That's the
7 problem I'm seeing.

8 MR. WOLFF: So, Your Honor, in the activity log
9 which is D-2 which is in evidence --

10 THE COURT: Let me see D-2 there.

11 MR. WOLFF: Y'all may put in another number. I'm
12 looking at ours. What's y'all's number?

13 MS. WOLF: The plaintiff put it in. Use the
14 plaintiff's number.

15 THE COURT: Can you put it on my screen there,
16 Lisa?

17 MR. WOLFF: I can put this up if you want to see
18 that.

19 THE COURT: Okay.

20 MR. WOLFF: They say it was too low. That's what
21 the plaintiff filed.

22 THE COURT: So what are y'all claiming they owe?

23 MS. BROWN: So, Your Honor --

24 THE COURT: Are you claiming they owe replacement
25 cost now?

1 MS. BROWN: Correct.

2 THE COURT: All those numbers --

3 MS. BROWN: Those are all actual invoices for work
4 that have been incurred and/or paid. They are more than
5 what has been paid, and then they also owe for the
6 windows which they're --

7 THE COURT: I'm sure that's in dispute. I've heard
8 testimony the windows are in big time dispute.

9 MS. BROWN: Right, and they're going to have
10 somebody here to talk about that. But that is -- we --

11 THE COURT: Only reason I'm asking this question is
12 me and my staff are trying to get our arms around how
13 we're going to charge the jury on it, and that's the
14 only reason I'm asking these elementary questions. I'm
15 really just trying to get my arms around it.

16 MR. WOLFF: So the actual cash value is the first
17 step in the process. So we tender an amount. They're
18 going to say it's too low, I'm sure; but I don't think
19 they have evidence that --

20 THE COURT: I understand what actual cash value
21 versus -- I get that. What I am struggling with is what
22 is the jury trying to decide in terms of dollars and
23 cents.

24 MR. WOLFF: If our payments as the repairs moved
25 along were late or timely and sufficient -- or

1 insufficient or sufficient. Those are the issues.

2 MS. BROWN: Well --

3 MR. WOLFF: Because we didn't owe replacement cost
4 until replacement started, and as replacement started we
5 were paying. So our position is as replacement was
6 ongoing we were paying money to ensure that they got
7 paid in accordance with the contract.

8 THE COURT: Here's the way I have it right now.
9 Y'all paid 1.7 some odd million dollars property damage.
10 Is that actual cash value or is that replacement?

11 MR. WOLFF: That's replacement cost.

12 THE COURT: Replacement cost. So there's
13 2.1 million left on the policy, right?

14 MR. WOLFF: There's 200,000.

15 THE COURT: 200,000. The policy limits are 2.1 is
16 what I mean. So what is that? Is that replacement?
17 They owe you an additional 200 something thousand in
18 replacement cost?

19 MS. BROWN: Correct, because the replacement costs
20 incurred are --

21 MR. WOLFF: So we don't believe those costs
22 incurred, and that's what our witnesses are going to
23 talk about. That 1.36 million is a number in a contract
24 that was never realized because the actual cost --

25 THE COURT: I think that's the reason I haven't

1 done -- I think my jury verdict form is going to be
2 correct then because I have that number on there and
3 basically, I'm paraphrasing, we're going to ask the jury
4 to decide if any additional amounts are owed over and
5 above that number. That's right. And keep it simple.

6 MR. WOLFF: Look, I don't know. We'll need to look
7 at it. If you can give us a copy.

8 THE COURT: I've been working on this for three
9 days. I'll be honest with you, I can't tell you if this
10 is even -- there's some cases out there on it, but I
11 don't know how many of them ever really went to trial on
12 this stuff. I don't know. I'm sure it has. Maybe
13 you've tried this issue before. I don't know.

14 MR. WOLFF: Yeah. Well, they normally get settled,
15 yes.

16 THE COURT: That's the problem. They do. And so
17 we're kind of blazing some new ground here, you know.

18 MR. WOLFF: Yeah.

19 THE COURT: What is it with me and new ground,
20 Mr. Wolff?

21 MR. WOLFF: I have a knack for that.

22 THE COURT: Me, too.

23 MR. WOLFF: I had this issue with Judge Milazzo and
24 that was a big fight and ended up getting resolved; but
25 I think it's very important that we get this right here,

1 and I know you agree.

2 THE COURT: Look, I want it right. I don't want an
3 error, but I also have to think about the charges
4 contain only those items that have been presented at
5 trial. We don't just put things in our charges when
6 there's been no evidence of it. We all can agree on
7 that.

8 MR. WOLFF: I've got actual cash value. They may
9 say --

10 THE COURT: Look, Toni, Mary, we need a very
11 succinct definition of actual cash value and a succinct
12 of replacement cost and we need that somewhere in our
13 charges. We'll figure something out. We'll kind of
14 find -- we'll get it done.

15 MR. WOLFF: And it may be -- I don't know what you
16 have. It may be in the lump. I've just got to see what
17 you have there. But I think it's got to be charged.
18 They've got to be charged with actual cash value and
19 replacement cost value. And then the question is was it
20 sufficient and timely.

21 THE COURT: I think my verdict form's correct. I'm
22 just trying to get the charge right.

23 MR. WOLFF: Right.

24 THE COURT: I don't think either way you probably
25 won't like my verdict form, but it is what it is.

1 MR. WOLFF: Right.

2 THE COURT: But, you know, I guess at the end of
3 the day it only matters what I think because I'm the one
4 that has to decide. Really only matters what I think.

5 MR. COX: We had a bunch of lawyers look at the
6 verdict form. It's tricky.

7 THE COURT: It is very tricky. It's very tricky.
8 Anyway. All right. Let's proceed. You're still on
9 cross-examination, Mr. Odom, if you would come retake
10 the stand. I'm sorry that we delayed, but I needed to
11 vet this out a little bit so I can be thinking all this
12 through. You can go get the jury.

13 (Jury enters courtroom.)

14 THE COURT: Sorry for the delay. We had to have a
15 little discussion before I brought you back in. You may
16 be seated. Thank you for your patience. I hope your
17 lunch was okay. Very good. And again, I apologize for
18 the delay. That was totally my fault. I had some
19 questions. I'm trying to work out logistics, really,
20 which help y'all because we're trying to speed things
21 along. Okay. So don't be upset with them about our
22 late start here.

23 Okay. Mr. Wolff, please proceed.

24 MR. WOLFF: Thank you.

25 BY MR. WOLFF:

1 Q. All right. Mr. Odom, I'm going to talk about All
2 Clear for a minute. I think we all have agreement that we
3 disagreed with the excessive nature of that remediation bill
4 of 490,000 plus dollars, correct?

5 A. Yes, sir.

6 Q. Thank you. And that was disputed and then settled.
7 You paid --

8 MR. WOLFF: And I apologize because this is the
9 best copy I've got. This is D-95, the release that
10 you-all provided.

11 BY MR. WOLFF:

12 Q. This is a release of claims by All Clear. You
13 recall that?

14 A. Yes, sir.

15 Q. I'll be candid with you, I can't hardly read it.
16 We've got a sum in there, but that's your signature there?

17 A. Yes, sir.

18 Q. And you settled the claim of 491. It settled for
19 how much?

20 A. I can't --

21 Q. I think it's -- is that the number there, \$212,039
22 right there?

23 A. I see it. There's another number down lower. Can
24 we see what that is?

25 Q. Okay. Yeah. I was going to say, I think you'd

1 already paid a hundred. So this is --

2 A. That's what it is. I paid them a hundred before
3 this.

4 Q. Okay. And you have no further liability. They're
5 gone. They've settled with you.

6 MR. COX: I'd like to object, Your Honor.

7 THE COURT: Okay.

8 MR. COX: There's another number on there.

9 MR. WOLFF: May we approach?

10 THE COURT: Yes, sir.

11 **BENCH CONFERENCE**

12 THE COURT: I saw --

13 MR. COX: It's hard to read.

14 THE COURT: Yeah, I saw it.

15 MR. COX: He does have additional obligation to pay
16 18,000 and some change in the contract. It's hard to
17 read. I'm sorry. I had to blow it up.

18 MR. WOLFF: So it's another 18,000. Okay.

19 MS. BROWN: 330 is the number --

20 MR. WOLFF: Can we just agree it's 330 total?

21 MR. COX: Yes.

22 MR. WOLFF: Perfect. Thanks, Judge.

23 **PROCEEDINGS CONTINUED**

24 BY MR. WOLFF:

25 Q. That worked well. So none of us can read it, but

1 we're advised that the total you were obligated to pay and is
2 done is 330 and the All Clear bill of 496 is done.

3 A. (Nods head up and down.)

4 Q. Yes?

5 A. Oh. Yes, sir.

6 MR. COX: Excuse me, Mr. Wolff. \$330,639.

7 MR. WOLFF: Yes, sir. Thank you.

8 BY MR. WOLFF:

9 Q. All right. So what I would like to walk through
10 here quickly, this is D-161. You-all have seen this. It's
11 probably in evidence, I believe. That's the list of the
12 payments and the dates. You recall those? What I'm going to
13 do to help is show the first check of 250,000. You see that?
14 Yes?

15 A. Sir?

16 Q. Do you see that check there?

17 A. Yes, sir.

18 Q. And then --

19 MR. WOLFF: I'm sorry, that's SIC189.

20 MR. COX: No objection.

21 THE COURT: It'll be admitted.

22 MR. WOLFF: Thank you. And then the next check and
23 that is SIC190.

24 MR. COX: No objection.

25 MR. WOLFF: Thank you. These are just the checks.

1 Can we just agree no objection on the checks?

2 MR. COX: No objection on these checks.

3 MR. WOLFF: Thank you.

4 BY MR. WOLFF:

5 Q. And that was for 218,192.53. And then the next one
6 was 177,731. You see those?

7 A. Yes, sir.

8 Q. These dates are attached with them and match with
9 the chart. And then the next one is -- I'm going to show
10 you, while they're getting that, the last one dated May
11 of '21 and that's \$1,120,726.49. You see that?

12 A. Yes, sir.

13 Q. Okay.

14 MR. WOLFF: And what is the number on this one?

15 MS. PAYNE: D-7.

16 MR. WOLFF: So that's D-7.

17 MR. COX: No objection.

18 THE COURT: It'll be admitted.

19 MR. WOLFF: Thank you. Then the one for, yes, the
20 29,000?

21 MS. PAYNE: D-6.

22 BY MR. WOLFF:

23 Q. D-6, right?

24 A. Yes, sir.

25 Q. Okay.

1 MR. COX: No objection.

2 THE COURT: It'll be admitted.

3 BY MR. WOLFF:

4 Q. That all totals up with the dates and totals of
5 1,796,091, correct?

6 A. Yes, sir.

7 Q. All right. Thank you.

8 MR. WOLFF: And I want to also -- this is a little
9 bit of housekeeping here so we have our record. This is
10 D-139 which is this check and invoice for the early work
11 in November.

12 MR. COX: I'm sorry. Can I look at that? This is
13 payment for Mr. Odom?

14 MR. WOLFF: It's the preconstruction work. Yeah.
15 Right. Exactly.

16 MR. COX: No objection.

17 MR. WOLFF: So -- thank you.

18 BY MR. WOLFF:

19 Q. This is D-139 which is an invoice from Encore for
20 preconstruction work of 24,927. You see that?

21 A. Yes, sir.

22 Q. And then your payment through Four-0 to match that
23 invoice, correct?

24 A. Yes, sir.

25 Q. That's before you cleared up the Eaux Holdings.

1 We'll stipulate that's for Eaux Holdings. All right. And
2 then we've looked at this contract at D-124, and I just want
3 to be clear that there were staggered payments. There were
4 progress payments, right? The first one was due seven days
5 after the contract. That's where we left off. 100,000?

6 A. And that's -- I need to correct that. That first
7 payment is not a progress payment.

8 Q. I'm sorry. It says -- okay. It says initial
9 payment.

10 A. Correct.

11 Q. Thank you.

12 A. More of a deposit. We negotiated that on what
13 he -- he worked with me on what I felt like I could afford at
14 the time and paid.

15 Q. But this is the contract. That's what you go by,
16 right?

17 A. That is the contract.

18 Q. And so a hundred thousand within seven days and
19 then a copy of the check at D-142. I'm just going to put
20 this in, and there's the hundred thousand dollar payment that
21 was made. It's still Four-0 but, again, Eaux Holdings. All
22 right. And then the progress payment under this contract is
23 250,000 will be made by the contractor within 30 days after
24 the initial payment, correct?

25 A. I do see that.

1 Q. And that was -- there's your check in February for
2 that amount, correct?

3 A. Yes, sir.

4 Q. All right. And then the final payment is approval
5 by -- of the work and receipt of depreciation held by the
6 insurance company. You see that?

7 A. I do see that, yes, sir.

8 Q. Okay. And you paid an additional \$500,000 on
9 June 3rd of 2021, correct?

10 MR. COX: I think this says 550.

11 MR. WOLFF: That's what I said.

12 A. I think you said 500.

13 BY MR. WOLFF:

14 Q. 550,000. I'm sorry. Right?

15 A. Yes, sir.

16 Q. And the work that Encore did you agreed was
17 satisfactory?

18 A. Yes, sir.

19 Q. And it met the inspection of the GSA?

20 A. Yes, sir.

21 Q. You were very pleased with the final product from
22 Encore?

23 A. Yes, sir.

24 Q. And so as of that time the building was released
25 for occupancy by the GSA to Department of Homeland Security,

1 right?

2 A. The first floor was, not the building.

3 Q. Right. But the second floor, you didn't have an
4 occupant to go in there, right?

5 A. You asked the question was the building accepted by
6 GSA. It was not.

7 Q. Of course. They're not --

8 A. Their space was accepted.

9 Q. Okay. That's the only space they were looking at?

10 A. That's correct.

11 Q. And you -- except for punch list items, you agreed
12 that Encore had done a good job and you're waiting for a
13 build-out on the second floor if and when you get a tenant,
14 correct?

15 A. That's not correct.

16 Q. That's not correct? You're not happy with the
17 work?

18 A. No, I'm very happy with the work. I'll use them
19 again. They'll be my very first phone call after Jeff Major
20 if this happens again. You keep referring to the second
21 floor as build-out. It was built out. I mean, it wasn't
22 waiting to be built out.

23 Q. Okay. But now it's ready to go for any tenant
24 that, when it comes in, you can build it out however you want
25 or however they want, right?

1 A. We can do some remodeling. I mean, it's built out,
2 I guess. Right now it's built out.

3 Q. Yeah, that's what I -- Okay. Thank you, sir. Hold
4 on.

5 MR. WOLFF: Housekeeping for me and the Court.
6 D-162 I think is the summary chart. If I didn't put it
7 in, I apologize; but I want to make sure that we get all
8 our evidence. So that's the one -- oh, no, I didn't do
9 that. Thank you. So we went through the payments to
10 Encore. This is D-162. We looked at them. Would like
11 to offer, file, and introduce D-162.

12 MR. COX: Just the same -- this one that's on the
13 screen?

14 MR. WOLFF: Yes, sir.

15 MR. COX: No objection.

16 THE COURT: It'll be admitted.

17 MR. WOLFF: Thank you.

18 BY MR. WOLFF:

19 Q. And these are all the payments that you've made to
20 Encore?

21 A. I believe that is accurate.

22 Q. Okay.

23 MR. WOLFF: And so if I didn't offer, file and
24 introduce, I do want to offer, file and introduce D-139,
25 142, 144, and 149. Those are the checks from Four-0 to

1 Encore. It's all been -- I just want -- we okay?

2 THE COURT: Yeah, we're fine.

3 MR. WOLFF: They're admitted?

4 THE COURT: Yeah, they're admitted. Double check
5 for me. Lisa really knows better than I.

6 MS. LACOMBE: I have one question, Judge.

7 THE COURT: Yes, ma'am.

8 MS. LACOMBE: As to SIC190, what was that referring
9 to?

10 MS. WOLF: I believe Mr. Wolff was referring to
11 Bates numbers that are on the documents.

12 MS. LACOMBE: Okay. Wasn't an exhibit labeled 1 --

13 MS. WOLF: D-5.

14 MS. LACOMBE: Perfect. Thank you so much.

15 THE COURT: I think we're good, Mr. Wolff.

16 MS. LACOMBE: We're good, Judge.

17 THE COURT: We're good.

18 MR. WOLFF: Okay. Thank you very much, sir.
19 Appreciate your time.

20 THE COURT: Redirect.

21 MR. COX: Thank you, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MR. COX:**

24 **Q.** Mr. Odom, Mr. Wolff suggested that at times you
25 needed to pay for certain work before Scottsdale owed it

1 under their policy. Was that your understanding of the
2 policy that Scottsdale sold you, of how it worked?

3 A. No, sir.

4 Q. How did you understand it worked?

5 A. I understood that they would pay the actual value.
6 Is that correct? I get confused with the terminology, I
7 guess. But it was my understanding the actual value minus
8 depreciation, that they would pay me that.

9 Q. And then later --

10 A. And then later, once I did the work, I submit
11 invoices and they pay me the balance.

12 Q. They pay you back the depreciation?

13 A. The depreciation.

14 Q. So your understanding is that he's flipping it
15 upside down. He's saying pay first then get paid, but your
16 understanding is --

17 THE COURT: Hold on a second, Mr. Cox.

18 MR. WOLFF: This is very, very leading and calling
19 for interpretation of the contract. That's not for this
20 witness.

21 MR. COX: I'll withdraw the question, Your Honor.

22 BY MR. COX:

23 Q. When Scottsdale sold you the policy was there
24 anything in that policy that said you had to submit
25 maintenance records on the building?

1 A. No, sir.

2 Q. Anything in the policy that you had to submit
3 repair records on the building?

4 A. No, sir.

5 Q. Anything in the policy that said you had to submit
6 to Scottsdale invoices for repairs?

7 A. No, sir.

8 Q. Anything that said you had to submit inspection
9 reports that had been done on the building before you bought
10 it?

11 A. No, sir.

12 Q. Was it your understanding that your premium was
13 based on the amount of the coverage --

14 A. That's --

15 Q. -- 2 million coverage?

16 A. Yes, sir.

17 Q. Did Scottsdale ever inspect your building before
18 they sold you the policy and charged you the premium?

19 A. No, sir, not that I'm aware of.

20 Q. So we went over it. The policy gives them the
21 right to inspect the building any time they want after they
22 sell you the policy and when it's enforced. Did Scottsdale
23 ever -- at any time between the time you first purchased the
24 policy and the time of Hurricane Laura, did they ever inspect
25 your building?

1 A. No, sir.

2 Q. Did they ever decrease your premium based on the
3 condition of the building?

4 A. No, sir.

5 Q. Did they ever increase the premium based on the
6 condition of the building?

7 A. No, sir.

8 Q. Mr. Wolff asked you a lot of questions about the
9 upgrade that you did to the HVAC system, the air conditioning
10 in the building?

11 A. Yes, sir.

12 Q. You chose to do that after the storm, correct?

13 A. Yes, sir.

14 Q. Did you ever seek to have Scottsdale Insurance
15 Company pay for that upgrade or did you pay for it yourself?

16 A. I paid for it myself.

17 Q. Mr. Wolff said that there's nothing in the record
18 to show that the rotten plywood that Encore replaced wasn't
19 included in the insurance claim. You heard that, right?

20 A. Yes, sir.

21 Q. You testified that the rotten plywood was excluded
22 from the insurance claim, didn't you?

23 A. Yes, sir.

24 Q. I'm going to show you a document that has been
25 entered into evidence in this case, Document 52. It's tough

1 to read. We're going to see if we can blow it up. Let's see
2 if that's the -- we might have the wrong one up there. I
3 still can't read it. I'm going to need better eyes.

4 THE COURT: What are you trying to read, Mr. Cox,
5 the highlighted part?

6 MR. COX: I'm trying to read the highlight.

7 THE COURT: I can read it. Can y'all read it,
8 ladies and gentlemen? They can read it.

9 MR. COX: Sorry. I've got the wrong one up there.

10 MS. BROWN: It's Exhibit 56.

11 MR. COX: I've been holding off on glasses for
12 about a year.

13 THE COURT: Better stop holding off.

14 BY MR. COX:

15 Q. Mr. Odom, can you read that? Can you read the
16 highlighted portion?

17 A. Yes, sir.

18 Q. This is a bill from Encore. It's called -- do you
19 know what a reverse change order is?

20 A. I'm familiar with it.

21 Q. A change order is something where they increase the
22 cost, correct?

23 A. Yes, sir.

24 Q. And what would a reverse change order be?

25 A. Decrease.

1 Q. And basically take it out of the insurance claim?

2 A. Out of insurance.

3 Q. Can you read what the highlighted portion says?

4 A. "Includes demo." And I'm not --

5 Q. I think it says replacement.

6 A. "Replacement of exterior plywood that was not
7 damaged by the storm, changing out plywood that was called
8 out by engineer to be changed or was rotted. This amount was
9 included in original contract amount but was not damaged by
10 the storm."

11 Q. At the bottom right, that's \$19,074, correct?

12 A. Yes, sir.

13 Q. Is it your understanding that that bill was
14 excluded, was taken out of your insurance claim, because it
15 wasn't related to the hurricane damage?

16 A. Yes, sir. Correct.

17 Q. The same was true on all of the Items 52 through 58
18 that were introduced into evidence. You've looked at those,
19 right?

20 A. Yes, sir.

21 Q. Here's another one. I don't know if you can read
22 it. Can you read the highlighted part?

23 A. "Price for glue-down on LVT that wasn't present
24 before the storm. The price is included in original contract
25 but not included in insurance scope of work."

1 Q. Another one that was just excluded from the
2 insurance claim because it wasn't something caused by the
3 storm, correct?

4 A. Yes, sir.

5 Q. And that was true for a number of these. Next one,
6 "Doors were not damaged by the storm, therefore were not
7 included in the insurance scope of work"?

8 A. Yes, sir.

9 Q. "Water fountains were not damaged by the storm;
10 therefore, replacement is not part of the insurance scope"?

11 A. Correct. Yes, sir.

12 Q. "Sound insulation for the second floor between the
13 offices. There was no insulation between the rooms on the
14 second floor before the storm, therefore is not in the
15 insurance scope of work"?

16 A. Yes, sir. Correct.

17 Q. "Installed closed cell foam on exterior walls where
18 there was bat insulation before the storm." And that was
19 deducted as well, correct?

20 A. Yes, sir.

21 Q. And what we did was we went through and added all
22 those up with you, correct?

23 A. Yes, sir.

24 Q. And that's how we went from the 1.36 million -- we
25 subtracted all those amounts, and I've got it summarized on

1 this page which I'd like to show you the amounts.

2 MR. COX: Your Honor, rather than show them the
3 summary because it can get a little confusing, we'll
4 stipulate that the number's 42,000.

5 MS. WOLF: \$42,044.

6 MR. COX: \$42,044 that was deducted from the 1.36
7 million.

8 MS. WOLF: Just want to make sure everyone knows we
9 agree on this.

10 THE COURT: Very good.

11 BY MR. COX:

12 Q. Mr. Odom, once we got to that figure, did you add
13 something back in to the Encore bill at the end to get to the
14 final number?

15 A. I believe the interest that I'm accruing daily.

16 Q. And that was the 17,000 that you testified about
17 earlier, correct?

18 A. Yes, sir.

19 Q. Show you again, Mr. Odom, the payments that
20 Scottsdale has made. Mr. Wolff just went through these with
21 you, correct?

22 A. Yes, sir.

23 Q. The payment on September 23rd, 2020, that was made
24 just seven days after the Scottsdale -- after the Skyline
25 estimate, correct?

1 A. Yes, sir.

2 Q. The next payment was made on November 23rd, 2020.
3 That was not within 30 days of the Skyline estimate, was it?

4 A. No, sir.

5 Q. You would agree with my math -- well, let's go to
6 the next one. The 177,000 that was paid on January 8th,
7 2021, we talked about that. That was two numbers. That's
8 for mitigation and the -- what's the people who did the temp
9 roof?

10 A. BJW. Oh. Crest.

11 Q. Crest Exteriors. Crest Exteriors plus part of the
12 mitigation work done by All Clear. And the part we're
13 talking about is the number that was given by Wardlaw,
14 Scottsdale's expert, correct?

15 A. Yes, sir.

16 Q. That's the 177?

17 A. Yes, sir.

18 Q. Am I right that you submitted that -- well,
19 Mr. Adam Lock testified on behalf of Scottsdale that he got
20 it sometime in October. You heard that?

21 A. Yes, sir.

22 MR. WOLFF: It's leading, Your Honor.

23 THE COURT: I'm sorry?

24 MR. WOLFF: Leading objection.

25 THE COURT: Sustained. I mean, technically you are

1 leading him. Try to rephrase it.

2 BY MR. COX:

3 Q. Assuming that Scottsdale got it sometime in
4 October, was that payment made within 30 days of the last day
5 of October, October 31st?

6 A. No, sir.

7 Q. That would have been 69 days after that, correct?

8 A. Close.

9 Q. And, in fact, Wardlaw's expert gave them the number
10 on November 12th. It wouldn't have been within 30 days of
11 even when Wardlaw's expert gave him the number, would it?

12 A. No, sir.

13 Q. The next payment was 29,440. You remember what
14 that payment was for?

15 A. It was kind of odd, but I do. It was Industrial
16 Refrigeration, BJW, and BJW was about 18.

17 Q. Correct.

18 A. I don't remember the other one.

19 Q. Bourgeois Electric?

20 A. Bourgeois Electric, 10,000, right at. Puts it up
21 there.

22 Q. All that work was done in September, correct?

23 A. Yes, sir.

24 Q. When did you submit those bills?

25 A. September.

1 Q. That payment in March, way, way after 30 days,
2 correct?

3 A. Yes, sir.

4 Q. The last one, when did you sign that contract for
5 1.36 million with --

6 A. Right before Christmas. December 20th, I believe.

7 Q. 23rd?

8 A. 23rd.

9 Q. This payment's May 18, 2021. If I told you that's
10 168 days -- no, I'm sorry, 146 days over 30 days, correct?

11 A. Yes, sir.

12 Q. All of these bills after the 250, they're well
13 after Skyline's estimate, correct?

14 A. Yes, sir.

15 Q. Not within 30 days?

16 A. No, sir, not close.

17 Q. Thank you, sir. I don't have any other questions.

18 A. You're welcome.

19 THE COURT: Mr. Odom, you may step down.

20 THE WITNESS: Thank you.

21 MS. BROWN: Your Honor, plaintiffs are about
22 prepared to rest; but I do have three exhibits that I've
23 been alerted I did not actually offer --

24 THE COURT: Okay.

25 MS. BROWN: -- that have been shown. Exhibit 3A is

1 the listing of actual costs to repair.

2 MS. WOLF: We had an objection.

3 THE COURT: I'm sorry?

4 MS. BROWN: It was the summary evidence.

5 MS. WOLF: Can I look at it again?

6 MS. BROWN: Sure.

7 MS. WOLF: Yes, no objection with that.

8 MS. BROWN: So I offer Exhibit 3A without
9 objection.

10 THE COURT: It'll be admitted.

11 MS. BROWN: The next one is Exhibit 69 which is the
12 summary of the payments.

13 MR. WOLFF: No objection. That's our --

14 THE COURT: Mr. Wolff, you got to let Ms. Wolf look
15 at that.

16 MR. WOLFF: I think it's off by 49 cents. We'll
17 fix it. It's off by 49 cents.

18 MS. WOLF: It's off by 49 cents, but we might as
19 well match on something. Can y'all fix yours?

20 MR. WOLFF: We have that total in there.

21 MS. WOLF: We don't have an objection to you --

22 MS. BROWN: Okay. I will rerun the math and submit
23 to the clerk the correct math, but I don't know if it's
24 wrong or not wrong.

25 MR. COX: We'll chop off 51 cents.

1 MS. BROWN: Yeah, we can make it an even --

2 MR. WOLFF: We'll fix it.

3 THE COURT: Listen, here's what let's do. Put it
4 in evidence. Y'all are stipulating it's off 51 cents.
5 Okay. Ladies and gentlemen, the parties have stipulated
6 that that exhibit is off 51 cents. So you can accept
7 that because they have agreed. That'll speed things
8 along. How about that.

9 MS. BROWN: Thank you, Judge. Exhibit 69 with the
10 stipulation. And Exhibit 99 is just the summary of
11 what's left on the policy.

12 MR. WOLFF: Technically that's wrong because the
13 policy limits are 2 million plus the --

14 MS. BROWN: Right. Adam Lock testified to this
15 exhibit. I just forgot to offer it.

16 MS. WOLF: Okay. If he's testified --

17 MR. WOLFF: But he said the policy limit is 2
18 million plus 10,000 for upgrades, code upgrades, plus 25
19 for debris removal. So we're fine with that.

20 THE COURT: Okay. What's the number on that one?

21 MR. WOLFF: Well --

22 MS. BROWN: This one is Exhibit 99.

23 THE COURT: Wait. Hold on. One at a time. DD's
24 going to fuss at me if I let y'all talk over each other.
25 Mr. Wolff, what's the issue?

1 MR. WOLFF: It's the total amounts recoverable
2 under that policy are 2 million under the policy limits
3 plus 10,000 for debris removal plus 25,000 -- no, I'm
4 sorry, 25,000 for debris removal plus 10,000 for code
5 upgrades.

6 THE COURT: Right. I remember.

7 MR. WOLFF: So, as Adam Lock said, it's technically
8 not a \$2,035,000 policy limit.

9 MR. COX: We'll stipulate that's correct.

10 THE COURT: I think the jury saw an exhibit on that
11 earlier in the trial anyway kind of breaking that out.
12 I think they can sort that out. It'll be admitted
13 subject to Mr. Wolff's clarification.

14 MR. WOLFF: Thank you, Your Honor.

15 MS. BROWN: So the three exhibits are 3A, 69, and
16 99. 99 is a summary of remaining policy.

17 THE COURT: Okay. Is that it?

18 MS. BROWN: With that, plaintiff rests.

19 THE COURT: Okay. The plaintiffs have rested their
20 case, ladies and gentlemen, so they've completed their
21 presentation of evidence. So at this point we will turn
22 now to Mr. Wolff and his client, Scottsdale, and they
23 can now put on any evidence in defense. At this time,
24 if you are prepared to call your next witness or --

25 MS. WOLF: We're going to call a witness live.

1 THE COURT: Y'all strategizing?

2 MR. WOLFF: Well, procedurally.

3 THE COURT: Do you need a minute?

4 MR. WOLFF: Actually, if we could, just a quick
5 second.

6 THE COURT: Go ahead. Confer.

7 MR. WOLFF: We're ready to proceed, Your Honor.

8 THE COURT: Okay. I'm going to ask the inevitable
9 question, not holding you to it. How long do you think
10 you're going to need for this witness on direct?
11 Ballpark it. I'm not going to hold you to it.

12 MS. WOLF: It's going to be over an hour.

13 THE COURT: Okay. The reason I'm asking, in about
14 30 minutes we're going to take our afternoon break
15 because, you know, staff needs to go to the restroom,
16 the jury. I just want to know. So we get about 30
17 minutes from now, find a good breaking point. I don't
18 want to break your flow.

19 MS. WOLF: You won't break my flow, and I want to
20 break then too.

21 THE COURT: Very good, then. We're all on the same
22 page.

23 MS. WOLF: Scottsdale calls Mr. Granger Stuck.

24 THE COURT: Okay. Come on up.

25 GRANGER ALLEN STUCK,

1 after being first duly cautioned and sworn to tell the truth,
2 the whole truth and nothing but the truth, did testify on
3 oath as follows:

4 **DIRECT EXAMINATION**

5 **BY MS. WOLF:**

6 Q. Good afternoon. Would you please state your full
7 name for the record.

8 A. Granger Allen Stuck, S-T-U-C-K.

9 Q. Where do you live?

10 A. I live in Sammamish, Washington, which is a suburb
11 of Seattle, Washington.

12 Q. Who is your employer?

13 A. J.S. Held, LLC.

14 Q. What does J.S. Held do? What does that company do?

15 A. We're a construction consulting firm.

16 Q. And what is your position with that company?

17 A. I'm an executive managing director. I manage files
18 and projects and clients for our company.

19 Q. How long have you been with the firm?

20 A. Coming up on 13 years.

21 Q. Why don't you explain for the jury what you do at
22 J.S. Held.

23 A. Sure. So I work on claims, some insurance related,
24 some noninsurance related, any time there's a claim issue or
25 dispute. It can be cost related, can be schedule related, or

1 both.

2 MS. BROWN: Your Honor, I don't know if this helps
3 and I hate to interrupt, but we do stipulate to his
4 expertise.

5 MS. WOLF: I appreciate that. It'll move it
6 faster. I do need to present it, but I appreciate that.

7 THE COURT: Maybe you can give us the abbreviated
8 version.

9 MS. WOLF: I'll give the abbreviated version, but I
10 still need the background for the jury.

11 THE COURT: I understand. You certainly have every
12 right to --

13 MS. WOLF: Thank you very much.

14 THE COURT: -- bring out his qualifications.

15 BY MS. WOLF:

16 Q. So what is your area of expertise?

17 A. General construction consulting, cost estimating,
18 schedule delay analysis, reviewing contracts, reviewing
19 construction documentation.

20 Q. All in the context of the construction industry,
21 right?

22 A. Yes.

23 Q. And, in fact, that's what you were hired to do in
24 this case, right, was to look through a lot of the
25 construction documents because this is essentially a rebuild

1 of a property that's been damaged by a hurricane, correct?

2 A. Yes, and do an inspection.

3 Q. Have you done that kind of work before, hurricane
4 related specifically?

5 A. Yes.

6 Q. How many times?

7 A. Oh, probably in the hundreds, I would guess.

8 Q. So, in other words, more than a hundred times
9 you've provided a cost analysis for a building, a commercial
10 building in this case, that's been damaged by a hurricane?

11 A. Yes.

12 Q. And what about -- other than hurricanes, do you do
13 other types of buildings damaged by things other than
14 hurricanes?

15 A. Yes. It can be construction related damage,
16 earthquakes, wildfires, what in the industry is called a cat
17 or catastrophe, any of those types of situations.

18 Q. Do you work in claims all across the United States?

19 A. Across the United States and some international
20 work. Done work in New Zealand, some work in Thailand, some
21 work in South Korea, Australia.

22 Q. In this case, you were hired by Scottsdale in April
23 of 2021; is that correct?

24 A. That's correct.

25 Q. So just briefly, why don't you explain why you were

1 retained by Scottsdale in April of 2021.

2 A. At that time it was my understanding there were
3 some disputed issues in relation to repairs on the building.
4 So I was asked to come in and do my own independent
5 assessment to see what I thought the damage cost was.

6 Q. So at the point when you were retained in April
7 of 2021 you understood that there was a dispute between Eaux
8 Holdings and Scottsdale as to the total amount of the claim?

9 A. Yes.

10 Q. And I guess we just need to make sure we understand
11 because I'm probably going to say the words "the claim" a lot
12 because I've been around you and I've heard you say "the
13 claim." So why don't we explain to the jury what do we mean
14 when we say Eaux Holdings' claim. What does that mean?

15 A. What I consider to be the claim is the request for
16 the cost of the damages. So the building owner, what we call
17 the insured, is saying, "I need this many dollars to repair
18 my building."

19 Q. Did you have an understanding in April of 2021,
20 when you were called in, that a certain amount had already
21 been paid for what they call the undisputed portion?

22 A. I didn't know that right when they first called me.
23 I found that out later.

24 Q. So you understand that you're being offered here
25 today for this -- to help this jury as an expert witness to

1 help them to make decisions they have to make in this case?
2 You understand that?

3 A. I do.

4 Q. And so let's -- I'm going to just talk briefly
5 before we go through your analysis as to exactly what
6 opinions we're going to offer to this jury that you're going
7 to provide to them. So, number one, you said that you were
8 asked to value the claim, right, to actually determine the
9 dollar amount of Eaux Holdings' claim based on your
10 independent analysis?

11 A. Correct.

12 Q. So you did that?

13 A. I did.

14 Q. And I know that you provided Scottsdale with that
15 number in May of 2021; is that right?

16 A. That's correct. I think it was May 13th of 2021.

17 Q. So you completed your analysis and gave it to
18 Scottsdale on May 13, 2021?

19 A. Correct.

20 Q. And that number was about \$1.8 million?

21 A. Correct. Just under, I believe.

22 Q. Yeah. For the record, and the jury's seen this,
23 but it's \$1,797,091. That was your determination of the
24 total value of Eaux Holdings' claim for repaired damage to
25 its building, correct?

1 A. Based on the documentation I had at that time, yes.

2 Q. And again, you said that was your independent
3 analysis?

4 A. Correct.

5 Q. And then you were called in again. Actually, I
6 want to just stop for a minute right there. In April
7 of 2021, we've already heard that the work was substantially
8 complete by that time, right?

9 A. Correct.

10 Q. So does that impact -- are you presenting an
11 estimate to Scottsdale, or what are you doing? What are you
12 basing your number on?

13 A. At that time I was -- it was mostly based on
14 estimated cost, not actual cost, because that was the data I
15 had.

16 Q. And we'll go through -- I'll show the jury your
17 spreadsheet, your analysis that you did, and you can explain
18 it then. I'm just trying to give an overview right now. And
19 do you understand that Scottsdale paid Eaux Holdings the
20 amount that you said the claim was worth after you gave your
21 number to Scottsdale? Is that your understanding?

22 A. My understanding, made a payment based on that
23 because of previous payments.

24 Q. Okay. Got it. So then later you understood that
25 the parties had still not reached agreement and were in

1 litigation, in trial this week; and you were hired to do
2 another analysis, a second review, correct?

3 A. Correct.

4 Q. And that review was done in August of 2021, right?

5 A. Correct.

6 Q. And by that time you had more information?

7 A. Correct.

8 Q. That's correct. Because we had done discovery. We
9 had issued subpoenas. We'd gotten records from Encore, from
10 the contractor. Right?

11 A. Correct.

12 Q. And that's the world you work in, is construction
13 documents?

14 A. Yes.

15 Q. So what we got from Encore through a subpoena was
16 things like, not just the contract that Encore entered into
17 with Eaux Holdings, but all of their supporting
18 documentation, in other words, the contractor's records,
19 right?

20 A. Correct, the cost reports, checks, actual invoices.
21 Sorry. When I say a cost report, it's a report that the
22 contractor keeps to show how much money they're actually
23 spending. We got documents like those.

24 Q. Right. So the subcontracts because any general
25 contractor, to do the work, is going to hire subcontractors

1 and suppliers, right?

2 A. Correct.

3 Q. So all that documentation is there and that
4 documentation shows you exactly what the cost of the work is?

5 A. Correct.

6 Q. So that gets you more from an estimate. Now you're
7 looking at actual cost, right?

8 A. Yes.

9 Q. So you've looked at all of that record. And we
10 just talked about the way I've always heard it called and
11 contractors will use the term job cost detail report. Is
12 that a phrase that's familiar to you?

13 A. That's what it's referred to in the construction
14 industry, yes.

15 Q. What is that?

16 A. It's an accounting record, again, that the
17 contractor keeps to show what actual cost they've spent to
18 subcontractors, to their own people, any expenses they've
19 had. Again, a contractor wants to track their costs so they
20 know how much they've spent. So it's a report that reflects
21 that.

22 Q. Because I know that that was one of the documents
23 that was important to your analysis, I just want to stop a
24 minute and make sure that we've explained that. So if you
25 say to a contractor, "How much did this job cost you," to the

1 contractor, contractors know to the penny how much a job
2 costs, right?

3 A. They sure should.

4 Q. Because they've got to tell their surety, their
5 bond company. Their partners want to divvy up the profits.
6 The bond company wants to know did you make a profit or loss.
7 So contractors know exactly how much they pay for a job,
8 right?

9 A. Yes.

10 Q. And what you do in your work is -- it's like a
11 forensic analysis once you get these records?

12 A. Yeah, that's what we would call it.

13 Q. So you can see beyond just a contract or beyond
14 just an invoice or beyond just an estimate. You put all the
15 records together and you can tell how much a job costs.
16 Right?

17 A. Correct.

18 Q. And that's what you did in this case, right?

19 A. On my second analysis, yes.

20 Q. So you've done two. Would you categorize your
21 analysis -- because you've reviewed this claim twice now?

22 A. Yes.

23 Q. Once in May and once in August?

24 A. Yes.

25 Q. And you had information in May and then you got

1 more information in August, right?

2 A. Correct.

3 Q. And both times you did what you call a forensic
4 analysis?

5 A. Yes.

6 Q. Don't just take things at face value, numbers on
7 pages, you actually dig behind them and find out how much did
8 this cost?

9 A. You have to know what the numbers mean. You have
10 to know what they relate to, what repair work was done that
11 reflect those numbers. So what we refer to as the scope of
12 work, you have to understand that to know what the numbers
13 mean.

14 Q. So actual cost is something I think we've talked
15 about over the last three days versus an estimate. That's
16 one thing. And the other thing is, what's shocking maybe to
17 all of us in this room, is seeing big bills like the All
18 Clear bill for \$491,000, which again, there's some agreement
19 between plaintiff and Scottsdale that that was a high number,
20 right?

21 A. Correct.

22 Q. It was an unreasonable number, right?

23 A. We thought so.

24 Q. Neither Eaux Holdings nor Scottsdale should pay
25 that number, right?

1 A. Correct.

2 Q. So it might be an actual cost that All Clear was
3 charging; but it wasn't a reasonable cost, right?

4 A. Yeah, I wouldn't actually call it a cost until
5 whatever's paid. So the cost is 330,000, as we're hearing
6 now.

7 Q. Right. And we're going to get into the analysis,
8 but I want to -- I hope I'm staying with the big picture
9 first to show what it is that you're doing and how it is that
10 you're doing it. So let's just talk about that number when
11 you did your second review in August of 2021. That number
12 was 1.6 million, right?

13 A. Correct, and change. I don't know the exact but
14 1.6 and change.

15 Q. \$1,620,118, right?

16 A. Yes.

17 Q. So it went down?

18 A. It did.

19 Q. We're going to talk about why. But again, you did
20 your forensic analysis twice based on the information that
21 was provided and it was a lot of information, right?

22 A. Yes.

23 Q. Okay. So is it your opinion in this matter that
24 Scottsdale at this point has paid all amounts owed to Eaux
25 Holdings for repair and replacement of damage to Hurricane

1 Laura?

2 A. Actually, I think they've overpaid.

3 Q. You think they've overpaid by \$200,000, right,
4 about?

5 A. Yeah. I mean, for example, the May analysis
6 included the value of the window replacement which we now
7 know was not done.

8 Q. We'll talk about -- I want to go line item by line
9 item because I know it's a lot for me to follow. And I have
10 it in a chart so we'll get to details when we see the chart.
11 I want to go ahead, then, and tell the jury what all your
12 opinions are that, as an expert, you're telling them so they
13 can listen to the basis and see whether or not they believe
14 your analysis. So one of them is that you believe Scottsdale
15 at this point has not only paid all that it owes but they've
16 actually overpaid by \$200,000, right --

17 A. Correct.

18 Q. -- one of your opinions that you're going to try to
19 explain to the jury how you got there?

20 The other is that you were asked to look at the Skyline
21 damage estimate that's the four-volume set, right --

22 A. Correct.

23 Q. -- that was shown here?

24 And you, in fact, did review it, right?

25 A. I did.

1 Q. So we've already determined it's an Xactimate
2 analysis that was done in September of 2020. It was
3 \$2.1 million. And, of course, now, they've explained the
4 actual four-volumes has a lot of photos of damage and some
5 other things in it. But you've reviewed all of that, right?

6 A. Correct.

7 Q. At the time that you came to meet Skyline and Jeff
8 Major, that was in April of 2021. And we've already said
9 that by that point the work was almost done, right?

10 A. Correct.

11 Q. So what was the relevance to you of the Skyline
12 estimate if it was an estimate and now the work's almost
13 done. Did you use it?

14 A. No. I reviewed it because before going down there
15 I wanted to try to understand the status of the disputes, I
16 guess.

17 Q. Okay.

18 A. But once I got down there and saw the status of the
19 work and it was almost complete, that's when I was looking --
20 didn't quite get but was looking for more cost related data.

21 Q. So it's fair to say that in April of 2021 when you
22 got the Skyline estimate it wasn't relevant because now we're
23 going to switch to actual cost, right?

24 A. Yes.

25 Q. But I asked you to look and Scottsdale's asked you

1 to look at that Skyline estimate for trial this week, right,
2 so that you would be able to explain some things about it?

3 A. Yes.

4 Q. And you have a couple of opinions about that
5 Skyline estimate. One is I asked you is it inflated, and
6 what's your opinion?

7 A. I believe it is.

8 Q. All right. And the second one I asked you was
9 whether or not it complied with industry standards for a
10 damage estimate in an insurance claim, and do you have an
11 opinion about whether or not it complies with industry
12 standards?

13 A. I don't believe it does.

14 Q. And why not?

15 A. There's a few things. One we've talked about. It
16 doesn't include ACV value, which normally it would.

17 Q. Can I just stop you right there?

18 A. Sure.

19 Q. I was definitely instructed not to just keep
20 throwing out RCV and ACV. Actual cash value, right?

21 A. Yes.

22 Q. It doesn't have actual cash value, and I believe
23 that Mr. Major's admitted to that. Right?

24 A. Yes.

25 Q. That's not a secret. You can just look at it, if

1 you know how to look at those things, and tell it doesn't
2 give an actual cash value?

3 A. Correct.

4 Q. So I promised to try to keep it big picture first.
5 I wanted to tell the jury what your opinions are so that they
6 can listen and see whether or not you've convinced them of
7 your opinion. So that's the overview. Let's back up and go
8 through your qualifications. Can you just start with college
9 and tell us if you have a college degree, what it's in, where
10 it's from.

11 A. I do have an engineering degree from Penn State
12 University.

13 Q. It's engineering, you said?

14 A. It is.

15 Q. And work history. I think you said you've been at
16 J.S. Held for a number of years, right?

17 A. Coming up on 13 years. My first 21 years were in
18 the general contracting construction industry, so building
19 large commercial projects around the country. I spent time
20 in different major cities all around the country building
21 projects.

22 Q. I may have asked you this. How many, I think I
23 did, total years of experience you have in the construction
24 industry and with cost estimating?

25 A. About -- I mean, cost estimating's been a part of

1 every element I've been in in construction. So about 33 and
2 a half years.

3 Q. Okay. Do you have any type of certifications or
4 professional licenses, anything that you do continuing
5 education for?

6 A. I teach continuing education courses, but I don't
7 have any certifications myself.

8 Q. And in what area do you teach continuing education?

9 A. Estimating and schedule delay analysis.

10 Q. And do you have a resume that you keep current?

11 A. I do.

12 MS. WOLF: I have it here today. This is going to
13 be Exhibit D-105.

14 MS. BROWN: No objection.

15 THE COURT: It'll be admitted.

16 BY MS. WOLF:

17 Q. We're not going to go through it because I think --
18 so what we have here -- okay. So what I'm looking at is a
19 six-page resume or curriculum vitae. And this is your
20 current version, right?

21 A. Correct.

22 Q. What I'd like to do is -- I'm not going to go
23 through everything, just have you tell us that's what it is.

24 MS. WOLF: I'd like to offer, file and introduce
25 Exhibit D-105. Did I say that already?

1 THE COURT: She already said she didn't object.

2 MS. BROWN: I didn't object.

3 MS. WOLF: I'm sorry. I was on autopilot.

4 THE COURT: That's all right. It's been admitted.

5 MS. WOLF: Great.

6 BY MS. WOLF:

7 Q. So can you, to the extent you haven't already done
8 so, tell us just a snapshot version of what's in your resume.

9 A. Well, starting from when I started in the
10 construction industry, I worked kind of in standard -- what
11 I'll call standard roles in construction, a project engineer,
12 project manager in charge of projects, as I said, anywhere
13 from Los Angeles to Denver, in the D.C. area. I eventually
14 became a superintendent which is working out in the field,
15 much more trade-related rather than paperwork-related. I
16 then continued on a track as a project executive or
17 construction executive in charge of larger projects,
18 continued to do that for the 21 years. 18 of those years
19 were with one company and then I spent another three years
20 with another company after that before coming to J.S. Held.

21 Q. How much of your work is done for insurance
22 companies, just in general? Are you able to give a
23 percentage?

24 A. It's not a hundred percent. It's more than
25 50 percent. 75, 80 percent, maybe, is insurance-related.

1 Q. Who are your other clients other than insurance
2 companies?

3 A. Well, we talked earlier about independent
4 adjusters. Sometimes we're hired by independent adjusters
5 but also hired by insurance carriers like Scottsdale or
6 Liberty Insurance or State Farm or FM Global, most of the
7 larger insurance companies.

8 Q. So I want to make sure we're clear. You're not an
9 independent adjuster, right?

10 A. We are sometimes -- we never work -- we work with
11 independent adjusters. We're recommended by independent
12 adjusters. When I say work for, we're never paid by the
13 independent adjuster.

14 Q. You're not an independent adjuster?

15 A. No, I am not.

16 Q. That's what I want to make clear because we've
17 talked about in this case Monte Jones was an independent
18 adjuster. You're not an adjuster, not a desk adjuster, not a
19 field adjuster. You're in the world of a construction
20 consultant or construction expert, right?

21 A. That's correct. Maybe I misstated that. We
22 work -- someone like a Monte Jones may recommend hiring us on
23 a project.

24 Q. I don't think you misstated. I just want to make
25 sure that I'm not asking a question that gets an answer that

1 might be misleading. So as part of your work and experience
2 do you review construction contracts? I think we've already
3 covered that.

4 A. Yes.

5 Q. So that's something that's very familiar with you,
6 reading construction contracts?

7 A. Yes.

8 Q. And in this case there was some discussion about
9 whether this was a complex claim and there's been discussion
10 about the complexity of the claim. I just wanted to ask you
11 because I know you've already said you've done stuff all over
12 the world and earthquakes. What we're talking about here is
13 a \$2 million two-story office building. I think it's about
14 15,000 square feet, something like that?

15 A. Correct.

16 Q. And it had some specialty construction in that the
17 first floor was a government tenant that we've heard a little
18 bit about. They had some special requirements. I don't
19 think anybody's necessarily defined what all that was; but it
20 was a government office on the first floor, right?

21 A. Correct.

22 Q. There was a jail there?

23 A. Yeah, jail, holding cells.

24 Q. I've heard about maybe bullet proof something on
25 the glass. So that's what we mean when we talk about

1 specialty construction?

2 A. Yes.

3 Q. So it's something that required a construction
4 expert more so than just a field adjuster, right?

5 A. Yes.

6 Q. Did I say that right? Okay. So we've touched on
7 the construction records and I want to just make sure that
8 we've emphasized that construction records are something that
9 you review in your line of work all the time, right?

10 A. Yes.

11 Q. So you get contractor's records and you go through
12 those and that's when you talked about your forensic
13 analysis, right?

14 A. Yes.

15 Q. And you're familiar with Xactimate? Do you know
16 how to read the Skyline estimate?

17 A. Yes.

18 Q. And you -- I'm pretty sure this is clear. I just
19 want to make sure that you know how to review and prepare,
20 whether it's estimates or cost evaluations, in the context of
21 hurricane damaged buildings, right?

22 A. Yes.

23 MS. WOLF: So, Your Honor, at this point I'd like
24 to tender Granger Stuck as an expert in construction and
25 that would include cost estimating, the repair scope for

1 damaged buildings, insurance claims, reviewing for
2 insurance claim purposes, review and analysis of
3 construction contract documents --

4 THE COURT: Why don't you make it a little more
5 succinct. That's a lot.

6 MS. WOLF: Okay. That's it. I just want to make
7 sure I don't get an objection later to any part of that.
8 That's what I'm tendering as an expert, construction
9 expert.

10 THE COURT: Any objection?

11 MS. BROWN: No objection.

12 THE COURT: Okay. He's accepted.

13 MS. WOLF: Thank you.

14 BY MS. WOLF:

15 Q. All right. I want to start with -- well, that was
16 the start. Now I'm going to move to the next part of it
17 which is to talk about your initial assignment and
18 involvement. We've already said that was April of 2021,
19 right?

20 A. Yes.

21 Q. You were hired by Scottsdale, right --

22 A. Yes.

23 Q. -- as a construction expert in this matter?

24 And you met with Skyline, or how did you come to meet
25 Skyline?

1 A. I just talked to them on the phone.

2 Q. Okay. So you were put in touch with each other?

3 A. Yes.

4 Q. All right. What I want to show you -- well, why
5 don't you explain that meeting. How did it go? You made a
6 site visit? Explain all of that.

7 A. So when I first got the call from Scottsdale, as I
8 said, I was made aware that there were some disputes on it
9 and they wanted me to go down, do an inspection, and do an
10 independent assessment of what I thought the repair cost
11 would be for the damage related to Hurricane Laura.

12 Q. So you made that site inspection on what date?

13 A. I believe April 19th.

14 Q. And did you -- so you went down. You had the
15 Skyline estimate and the Grecco estimate? You received
16 those?

17 A. Yes.

18 Q. And so tell us about the site inspection on
19 April 19th. Who was there and what did you do?

20 A. I met with Mr. Major and Ms. Bentz from Skyline. I
21 walked the site with Mr. Major. We walked the first floor,
22 walked the second floor, walked the exterior, and walked the
23 roof. Little bit of a safety issue on the roof on the ladder
24 we had to climb over, but we made it without any damage. And
25 then I was really just trying to assess what work had been

1 done, which was substantially complete at that time, so try
2 and understand what they've done and then try and understand,
3 now that the work is done, what is the cost related to that
4 as opposed to the estimate.

5 Q. And did you ask them what is the claim?

6 A. Yes.

7 Q. All right. And so I think you said, I want to make
8 sure it's clear on the record, that on April 19, 2021, when
9 you went, the building, the whole building itself, the work
10 was reaching or had reached substantial completion? Do you
11 know exactly?

12 A. It was reaching substantial completion.

13 Q. So it was almost done?

14 A. Yes.

15 Q. And let me show you -- so you asked what is the
16 claim; and what were you provided with, if anything? What
17 were you told?

18 A. We sat down to meet after our job site walk. I was
19 asking, "I have the estimate. But now that the work's going
20 on, what is the claim? What is the basis for the claim?"
21 And we started discussing what that was with the Encore
22 contract and some of the other invoicing that had happened on
23 the job, and I started handwriting down notes and values to
24 try to understand what the claim value was at that time.

25 Q. So there wasn't anything in writing? You were

1 having to generate it right there at the site meeting?

2 A. Correct.

3 Q. And again, we're talking at this point about actual
4 cost, right?

5 A. Yes.

6 Q. Let me show you what I believe is already
7 introduced and admitted as D-77.

8 MS. WOLF: I'm looking for anybody to tell me it's
9 already in. It's in. Okay.

10 MS. BROWN: I have it as in.

11 MS. WOLF: It's a plaintiff's exhibit.

12 MR. WOLFF: She's the one that might have to say
13 it.

14 MS. LACOMBE: I have it.

15 MS. WOLF: Okay. So this is already in.

16 BY MS. WOLF:

17 Q. I might be the only one that has trouble seeing it.
18 Can y'all see it? Mr. Granger, can you see it?

19 A. I can.

20 Q. All right. So what we're looking at here is a
21 May 6th e-mail. This is from Ms. Bentz at Skyline Adjusters,
22 right, to you?

23 A. Yes.

24 Q. Actually, because I think this goes backwards,
25 let's make it -- have it make sense by starting here. Let's

1 do that. All right. So this is on May 5th, 2021. You send
2 an e-mail to Jade. And she is with Skyline Adjusters,
3 correct?

4 A. Correct.

5 Q. I'm going to read just the highlighted part. "From
6 my end, I'm working on my comparative analysis comparing
7 Skyline data, Grecco data," and I think you mean and our
8 independent data. "However, I know I said this before but
9 I'm struggling to line things up for comparison because we
10 don't have a consolidated claim for all claimed scope. Is
11 that available yet?"

12 So you were asking -- you were telling Skyline that you
13 needed more information to be able to do your analysis,
14 correct?

15 A. Correct. When we -- we had the Skyline estimate.
16 We had the Grecco estimate. They obviously didn't line up.
17 So if you want to try to compare them, it's apples and
18 oranges. It's always helpful for everybody in the claim, in
19 my opinion, that if you can line things up to make it apples
20 to apples it's much easier to understand. Even though the
21 numbers may not agree, at least they align. So that's what I
22 was asking for to try to do my comparative analysis with
23 because the data I had to date couldn't align.

24 Q. And that analysis that you're doing, that's part of
25 the process. If you've got two estimates and one's up here

1 and one's down here, you have to do your comparative
2 analysis. And like you just said, you have to be comparing
3 the same thing, apples to apples. Right?

4 A. Correct. Again, what we call scope of work. You
5 want to be comparing similar scope of work.

6 Q. So what is the scope? Because before you can even
7 talk about if somebody's cost is too high you have to make
8 sure that you're both on the same page as to what is the
9 hurricane related scope, right?

10 A. Correct.

11 Q. Is that going to be one of the first things you do
12 with any estimate, is to make sure that there's agreement as
13 to what was caused by the hurricane?

14 A. Yeah. There may not always be agreement, but you
15 always want to find the scope before you price the scope.
16 The scope drives the numbers.

17 Q. Then you say, "I'll have to piece together what I
18 think is the claim based on our discussion at the site." And
19 that's what you were just discussing. You got to the site
20 and asked them what the claim was, and they just started
21 verbally telling you what that was?

22 A. Correct.

23 Q. Because there's nothing in writing at that point?

24 A. Correct.

25 Q. And subsequent info. And then Ms. Jade says,

1 "Encore contract, window estimate, roofing estimate,
2 invoices, et cetera." So the same data -- a lot of the same
3 data that you told us is what you rely on to determine the
4 actual cost of something, that's what's referred to here in
5 this e-mail?

6 A. Yes.

7 Q. So then the answer is, on May 6th from Ms. Jade at
8 Skyline, she says, "Good evening, Granger. Per the below,
9 please see attached a workbook that should assist with the
10 consolidated claim. Please note this is for discussion and
11 to help summarize where we see the components and their
12 values." I'm going to skip down. It says, "It is and was
13 only an estimate. However, the scope was used as a detailed
14 guide to damages which Encore ultimately repaired under their
15 contract. The true cost is only actually realized when the
16 repairs and/or replacement is complete." So I read all that
17 correctly?

18 A. Yes. The only -- the highlighted part that says
19 "It is and was only an estimate," I believe that's referring
20 to the Skyline estimate.

21 Q. Okay. And so at this point Skyline sent you what's
22 called a workbook, and we're going to look at that in a
23 minute. It looks like a spreadsheet, right?

24 A. Correct.

25 Q. And they prepared that for you on May 6th per your

1 request?

2 A. Yes.

3 Q. So what was -- if you can identify, like, a few of
4 the big items. Or what was the difference that you saw
5 initially between the Skyline estimate and the Grecco
6 estimate? Was it a lot of little things, a couple of big
7 things? What was the --

8 A. There was a few major things.

9 Q. And what was that?

10 A. So it was the cost of the roofing repairs, it was
11 the cost of the exterior panel replacement, and it was the
12 cost of the window replacement.

13 Q. So it was sort of three big ticket items that had
14 to be, what, further investigated to determine exactly what
15 the cost was going to be?

16 A. Well, more so what the scope was going to be --

17 Q. The scope?

18 A. -- that they drove, yeah.

19 Q. And so it might be good because we're going to talk
20 about the wall cladding and we've already talked about the
21 window system, and you said those are kind of the big ticket
22 items. The wall cladding, we're talking about anywhere from
23 300,000 to almost \$450,000, right?

24 A. Correct.

25 Q. But like you said, before you even talk about

1 what's the cost and is it reasonable was the question whether
2 or not all of the wall cladding had to be replaced or whether
3 just damaged portions had to be replaced?

4 A. That was one of the things I had to do in my
5 independent assessment, was go down and determine whether I
6 thought that needed to be replaced, whether I thought the
7 windows needed to be replaced.

8 Q. And that's one of the things that Scottsdale asked
9 you to investigate, tell us whether or not in your expert
10 opinion all of the wall cladding on that building needs to
11 come off and be replaced or whether or not it can be done --
12 whether or not the owner can be put back where they were by
13 just replacing the damage. That was something you were
14 tasked with making a determination on?

15 A. Yes.

16 Q. And what was your answer?

17 A. For the wall panels, when I went down and saw it,
18 walked the job, I determined that I believe the entire
19 exterior wall panel system needed to be replaced. We get
20 into issues where, again, putting a building owner back where
21 they were, if you try to just repair some panels, the colors
22 may not match, you may notice repairs. When I looked at it,
23 it just didn't -- I didn't think that was replacement in
24 kind, as we say in the industry.

25 Q. Okay.

1 A. So my opinion was that it had to be replaced with a
2 full exterior wall panel system. So I agreed with replacing
3 the exterior wall panels.

4 Q. So you agreed, and I believe the Skyline estimate
5 had in it -- or maybe you tell me. Did it have in it full
6 replacement of the wall cladding?

7 A. It did.

8 Q. And we can go ahead and cut to the chase on this.
9 How much money did Skyline have in their estimate for
10 replacement of the wall cladding?

11 A. 430,000, somewhere in that range. Over 400,000.

12 Q. So you agreed with the scope. "Yes, I agree with
13 you. All of this wall cladding needs to come off." Right?

14 A. Yes.

15 Q. But then you didn't agree with the price?

16 A. Correct.

17 Q. And again, I'm going to save the actual numbers for
18 when we get to the chart because I think it'll be easier.
19 That was one of the things in the Skyline estimate. The
20 actual cost of that wall cladding was about \$300,000, right?

21 A. When we got the actual cost data, yes, it was about
22 300,000.

23 Q. So in the Skyline estimate it's \$430,000, you said?

24 A. Approximately.

25 Q. And the actual cost of it was 300,000?

1 A. Correct.

2 Q. So am I correct in saying that if an insurance
3 company were just to pay an estimate they would be overpaying
4 claims?

5 A. Correct.

6 Q. I want to just -- because I think it helps to
7 understand what we're talking about with this wall and window
8 system. This is a commercial building so we're not talking
9 about windows like you have on your home, right?

10 A. No.

11 Q. So the decision about whether or not -- this is one
12 of the photos you took when you went there in April of 2021,
13 right? Actually --

14 A. I can't tell if that's my photo specifically or
15 not.

16 MS. WOLF: This is D -- I'm sorry. This is
17 Mr. Stuck's photos and it's at D -- I think it's 114,
18 D-114. And the only photo I'm going to show is the
19 first one, 784, so that's the only one we need to mark
20 as to put in as an exhibit. We don't need to put all of
21 them.

22 MS. BROWN: No objection.

23 THE COURT: It'll be admitted.

24 BY MS. WOLF:

25 Q. This is just to be able to explain this. So what

1 we're looking at there is the wall cladding, right?

2 A. Correct.

3 Q. Is it the light colored beige stuff?

4 A. No, it's the darker -- well, it's a combination of
5 two different colors; but the darker is almost like a wood
6 grain kind of wall panel system like on the corner and --

7 Q. Let me -- is it this right here? All of this is
8 what we're talking about with the wall cladding?

9 A. Yes.

10 Q. And then is it on this side of the building, too,
11 and all around here?

12 A. Can't tell on the other side if that's installed
13 yet or not at this time. They were in the process of
14 installing it. Actually, if you look above where your pen is
15 right above that little carport roof, no, to your -- going
16 backwards to your --

17 Q. Here?

18 A. No, the other way.

19 Q. Other way. Here?

20 A. Thank you. You can see where part of it is
21 installed below that window. See where it kind of stair
22 steps on there?

23 Q. Okay. Okay. I got you.

24 A. It's in the process of being installed.

25 Q. All right. So the decision here was whether or not

1 all the wall cladding needed to be replaced, and then this is
2 the window system that we've been talking about for two and a
3 half days. Is it called a ribbon window system?

4 A. Yeah, because they're ribbons of windows around the
5 building.

6 Q. Right. So I'm -- on the window system you had to
7 make a similar decision, whether or not to fix the stuff that
8 was broken, smashed, damaged. And it wasn't just glass.
9 There were some mullions and stuff that were scraped. You
10 had to decide whether or not to make this -- put this owner
11 back where they were pre-storm, whether or not the entire
12 window system needed to come out and be replaced or whether
13 or not the damage alone could be done, right?

14 A. Correct.

15 Q. You were tasked with making that decision so that
16 Scottsdale would know what to pay, right?

17 A. Correct.

18 Q. And again, it was Scottsdale that hired you and
19 asked you to make that decision, right?

20 A. Yes.

21 Q. And what was your decision on the windows?

22 A. That they also should be replaced in their entirety
23 based on the manner of installation, I think Mr. Major's
24 talked about, but also, again, the color. The color matching
25 is -- you know, windows age. They sit there. If you try to

1 just replace one, it's not going to match the rest. So my
2 opinion was that it needed to be replaced in its entirety.

3 Q. Right. So your opinion was all the wall cladding
4 needs to be replaced and the ribbon window system needs to be
5 replaced?

6 A. Correct.

7 Q. And the window system we're talking about is about
8 \$160,000, right?

9 A. My value of it was.

10 Q. Your value?

11 A. Yeah. Their value was slightly higher.

12 Q. Skyline also had full replacement in the estimate?

13 A. Skyline had replacement, but by that time I was
14 reviewing the estimate that Encore had put together for
15 window replacement.

16 Q. So we have that -- I have that coming up. I want
17 to make sure that we keep those two things clear. I just
18 wanted to explain what we were talking about what the wall
19 cladding and the window system.

20 A. Yes.

21 Q. And the roof, we've heard from Mr. Poole that roof
22 was replaced. When you got the records what you had as the
23 actual cost was \$240,000, right?

24 A. Correct.

25 Q. And you didn't know that there was this additional

1 what we now know is -- because we just got it right before
2 trial, an additional, I think it was \$36,000. You were here,
3 though, for trial, right, so you've heard the testimony?

4 A. Yes.

5 Q. So we now know that Poole Roofing has at least said
6 that there is an additional amount owed. Of course, you
7 didn't have any of that when you did your analysis, right?

8 A. No. I knew there was an estimate that I saw, but
9 the actual cost was the 240,000.

10 Q. Okay. All right. So what I want to do now --

11 MS. WOLF: Your Honor, can I ask you a question?

12 THE COURT: Sure.

13 MS. WOLF: Are we close to when you wanted to take
14 a break? Because I'm about to launch into something
15 else. I don't need a break, but I wanted to ask you
16 because this is a good stopping point.

17 THE COURT: I understand. I'm concerned about the
18 jury. We need to take a little afternoon break. Let's
19 take about a ten minute break or so, make it 15,
20 everybody go to the restroom, stretch your legs. All
21 rise for the jury.

22 (Jury exits courtroom.)

23 THE COURT: Okay. Anything else?

24 MR. COX: No, Your Honor.

25 THE COURT: Ms. Wolf, just out of curiosity, so I

1 can plan our afternoon, how long you think you have left
2 with him?

3 MS. WOLF: Since y'all seem to all be helping me
4 out, I feel like I need to move faster. It's going to
5 be -- I think it's going to be another hour.

6 THE COURT: Another hour. All right. Just wanted
7 to know. Okay.

8 (Recess is taken.)

9 THE COURT: So what I'm going to hand out to you
10 here so you can read them and weep, here's the jury
11 charges. At the conclusion of our day we shall have our
12 charge conference. So I want to hand that out to you,
13 let you at least be previewing.

14 MR. WOLFF: That's what I was actually looking at,
15 was the verdict form. You still working on that?

16 THE COURT: No. You should have gotten it.
17 Where's the verdict form? We'll get you a verdict form.
18 Should have been in there. I thought it was in there,
19 well, separate sheet. We'll bring the jury in as soon
20 as she gets that for you. I think for right now we left
21 your numbers on there. We'll take those out, obviously,
22 after the charge conference. I left them in there for
23 references right now. You know, you'll have defendant's
24 Charge 23. That'll come out, those little -- because
25 the jury will be allowed to take the charges with them

1 into the jury room. So we don't want to have any
2 reference that this was plaintiff's charge or this was
3 defendant's charge because they're not. They're the
4 Court's charges. Go ahead and bring the jury in.
5 She'll just hand it to you when she comes in.

6 (Jury enters courtroom.)

7 THE COURT: Ms. Wolf, you may proceed.

8 MS. WOLF: Thank you. What I want to put up now
9 and offer is labeled D-104A.

10 MS. BROWN: No objection.

11 THE COURT: It'll be admitted.

12 BY MS. WOLF:

13 Q. Mr. Stuck, you recall that we just looked at that
14 e-mail from May 5th and May 6th where Skyline sent you what
15 they called, I believe, in the e-mail a workbook and you said
16 it was this spreadsheet. Is this the spreadsheet that was
17 the attachment to that e-mail?

18 A. Yes, ma'am.

19 Q. So we look up in the top right and we see the date
20 on it, May 6th, 2021, right?

21 A. Yes.

22 Q. And let me confirm with you. This was prepared by
23 Skyline and given to you, correct?

24 A. I got it from Skyline. I believe they prepared it.
25 I didn't physically see anybody typing it, but it came from

1 them.

2 Q. And this was at your request when you asked them to
3 put something in writing or they said they would to help you
4 out --

5 A. Correct.

6 Q. -- so that you could both know what the claim was
7 at that point, right?

8 A. Correct.

9 Q. And notice that Skyline wrote on it "for discussion
10 only." You see that at the top right there?

11 A. Yes, I do.

12 Q. Does that mean that the claim yet had not been
13 fully formulated, they were still working on it?

14 A. That usually is an indication of a preliminary
15 document, not finalized.

16 Q. So everything that's in all of the cells on this
17 page was put here by Skyline; you didn't prepare any of this,
18 right?

19 A. That's correct.

20 Q. And there's no total at the bottom. We see the
21 amounts in the columns where Skyline is telling you what they
22 believe the claim to be; but they didn't total it, right?

23 A. That's correct.

24 Q. And what we see -- for example, we talked about the
25 Encore contract, \$1.36 million. You see that right there?

1 A. I do.

2 Q. So at this point nowhere in here is the Skyline
3 estimate. This is now going to be based on -- most of it's
4 on actual cost or what they're asserting to be actual cost;
5 is that right?

6 A. Correct. You can -- actually, if you look, there's
7 a column there called "actual/budget" what they consider to
8 be actual and what is still a budget.

9 Q. Okay. I see that. So this column right here,
10 "actual/budget"?

11 A. Correct.

12 Q. And we see that second line. I just wanted to
13 point this out because it was something that we just talked
14 about earlier today when Mr. Odom, I believe, was on the
15 stand and that's that \$42,044 in what was called Encore
16 change orders, right?

17 A. Correct. It's a deduct.

18 Q. Right. That's the way Encore -- you attended
19 Encore's deposition, right?

20 A. I did.

21 Q. And so you not only got their documents that we
22 received through a subpoena but you also were present when
23 the Encore representative, Evan Monheiser, was deposed over
24 two days, right?

25 A. Yes.

1 Q. And you were able to confirm and you heard that the
2 way Encore tracks what they labeled here as upgrades and
3 unrelated, meaning unrelated to the hurricane, he said he had
4 to come up with a way to do it and he did it through this
5 deduct change order system, right?

6 A. Yeah. They weren't true change orders because they
7 weren't changing the contract. Those items were still
8 included in his contract, but he was coming up with a way to
9 value those --

10 Q. Right.

11 A. -- I guess for them to put in the claim.

12 Q. So they could show that they were tracking
13 something that was non-hurricane related, right?

14 A. Correct.

15 Q. And you recall also that Mr. Monheiser said that he
16 wasn't charged with tracking them, this was just whatever he
17 tracked off the top of his head, right?

18 A. Yes. I think he said he had difficulty keeping
19 track of those things and tracked the ones he could.

20 Q. But I believe, if I'm not mistaken, that you too
21 carried that same \$42,044. You accepted that number as being
22 the non-hurricane related with respect to these items, and
23 you too have that same number in your column of numbers.
24 Right?

25 A. After I reviewed them and understood them, yes, I

1 accepted them.

2 **Q.** So part of your possess is you see what somebody's
3 claiming, you review it, and if it backs up, if there's
4 supporting documentation for it after you do your forensic
5 analysis, then you accept that as, yeah, that's reasonable
6 based on the back-ups so I'll accept that number, right?

7 **A.** Yeah, or we don't. Until that point it's just a
8 number on a sheet. So we have to understand, again, what the
9 number means and substantiate it to be able to say yes, we
10 agree with it, or no, we don't agree with it.

11 **Q.** So what I want to do next is move to your analysis.

12 MS. WOLFF: So this document that we're going to
13 look at is defendant's Exhibit D-34 and this is a
14 spreadsheet that was attached to Mr. Stuck's report.

15 MS. BROWN: I don't have an objection to it. It's
16 fine.

17 BY MS. WOLF:

18 **Q.** All right. So first, Mr. Stuck, this is -- is this
19 your work-product?

20 **A.** Yes, it is.

21 **Q.** I'm sorry. Can you see it?

22 **A.** It's a little blurry.

23 THE COURT: You can zoom in on this thing,
24 Ms. Wolf.

25 MS. WOLF: I want to see if it would do better if

1 we pull it up. Is that too cumbersome? Okay. We're
2 going to switch to having her computer connect. Go back
3 to the other one.

4 THE COURT: I find paper always works better.

5 BY MS. WOLF:

6 Q. All right. So this is your work-product, right,
7 Mr. Stuck?

8 A. Correct.

9 Q. And did you take the document that we just looked
10 at that you got from Skyline and use that to create this
11 spreadsheet?

12 A. I did.

13 Q. And so what I want to do is look at a few things.
14 For example, here it says "Skyline as claimed." Is this
15 section right here what you got from the May 6 spreadsheet?

16 A. Not exactly. Some of those line items at the top
17 were consolidated into Skyline's entire contract via 1.36 and
18 I just broke them out into different trades so that I could
19 analyze them separately.

20 Q. So you're getting into details now. I need to do
21 big picture first --

22 A. I'm sorry.

23 Q. -- so that I don't get confused. I just want to
24 make sure this box right here, am I correct in saying that
25 this contains your taking what was in the Skyline May 6

1 spreadsheet and putting it here?

2 A. Yes, it does.

3 Q. And then we look next to it, because I'm seeing the
4 colors, the pinkish orange here. And the "J.S. Held as
5 reviewed" is in this section over here, right?

6 A. That's correct.

7 Q. So what you're saying is that the -- you started
8 breaking up some of the rows into their trades, right?

9 A. For us to properly analyze it, yes.

10 Q. Let me just stay big picture for a second because
11 what I'm seeing now is a total down here of \$2,443,971 and
12 you have at the top of that column "Skyline claim." You see
13 that?

14 A. Yes.

15 Q. That column of numbers, is that the same numbers
16 that you got from the May 6 spreadsheet, so you just totalled
17 them?

18 A. Yes.

19 Q. So if Skyline had totalled what's on the May 6
20 spreadsheet it would have come to \$2,443,971?

21 A. Correct.

22 Q. As of May 2021 that was the claim, \$2.4 million?

23 A. Yes.

24 Q. And you did your analysis. We'll talk about that
25 in just a second. And the number you got, J.S. Held reviewed

1 amount, is in this column and that's the \$1,797,091, right?

2 A. Correct.

3 Q. And your understanding is that that number is the
4 one that Scottsdale paid from?

5 A. That's the basis for that final payment, yes.

6 Q. We've seen here today and probably yesterday that
7 chart that shows that that is, in fact, the amount paid?

8 A. Correct.

9 Q. Minus, I think, a \$1,000 deductible, right?

10 A. Could be. I don't know. Yes.

11 Q. Okay. So if the difference is a thousand
12 dollars -- this is the number you gave to Scottsdale; but if
13 it's different by a thousand dollars, that could be the
14 deductible, right?

15 A. Yeah, it could be.

16 Q. So you told us that you started breaking up the
17 Encore \$1.36 million contract, and I just want to understand
18 that. So you saw that contract and it does, in fact, say
19 \$1.36 million on Page 1, right?

20 A. That's correct.

21 Q. And you took it, though, and you didn't just put in
22 a lump sum of 1.36 million. You started breaking it up by
23 trades. So why don't you explain that. I see general
24 requirements, you know, wood, thermal. So, in other words,
25 you start taking the construction contract and breaking it up

1 into the subcategories?

2 A. Correct, so we can analyze the values of specific
3 types of work.

4 Q. And that's a standard type of thing in the
5 industry. General requirements or general conditions is
6 something that you hear in construction, right?

7 A. Yes.

8 Q. And what -- I think what that means, and you can
9 tell us, is everything that's not the labor and materials or
10 supplies, all the other costs of the job --

11 A. Yeah.

12 Q. -- called general conditions or general
13 requirements?

14 A. Yeah, non-production type work. So it's not people
15 swinging a hammer. It's a project manager, an office
16 trailer, officer paper or copier, those types of things you
17 need to support a project that aren't actually production
18 related.

19 Q. And the reason why I'm just spending a little time
20 on this detail is that goes back to that job cost detail
21 report, right?

22 A. Yes.

23 Q. That's the report that tells you every single cost
24 to the penny that's associated with the job, right?

25 A. Yes.

1 Q. So it's cell phones, it's the pro rata, the
2 superintendent and the superintendent's truck, it's
3 insurance, it's every single thing; every penny that it takes
4 to do that job goes in that job cost detail report, right?

5 A. Yes, with one exception. If they make a profit on
6 the job, usually profit's not a cost. So you don't see the
7 cost of profit.

8 Q. Right. So you can just get a contractor's job cost
9 detail report when they're done and add the overhead and
10 profit and you have the cost of the job, right --

11 A. Yes.

12 Q. -- to the owner?

13 That's the cost of the job to the owner, is the
14 contractor's actual cost plus whatever overhead and profit
15 they made?

16 A. Correct.

17 Q. 20 percent in the industry, is that -- what's the
18 standard in the industry?

19 A. It depends on the type of work. Larger projects
20 tend to have lower percentages. They might be more like a 10
21 percent overhead, 5 percent profit. Smaller jobs, those
22 numbers will increase a bit.

23 Q. What'd you use when you did your analysis?

24 A. For general conditions, overhead, profit, and tax,
25 I did 30 percent total.

1 Q. And is 30 percent, is that a generous number,
2 straight on industry standard number? Where do you put that
3 in the range of things?

4 A. I thought it was fair to generous.

5 Q. Fair to generous. Which makes sense if you're in a
6 hurricane hit area because you know that the supply of
7 contractors is going to be pretty tight, right?

8 A. Yes.

9 Q. That means their prices are going up just on
10 overhead and profit, right?

11 A. Yes.

12 Q. And you took that into account?

13 A. Yes. Some of that cost is in their job cost report
14 already.

15 Q. Right, meaning that all the cost of materials that
16 go up are in the job cost report --

17 A. Yes.

18 Q. -- but now we're talking overhead and profit?

19 A. Yes.

20 Q. Okay. There's something on here that caught my
21 eye, before I move off of it, so I don't have to come back,
22 but the cost to repair masonry crack in jail, work pending,
23 cost will be realized, range is 2 to 7,000. I realize that's
24 not a big number. And you included that cost, right, because
25 there was a crack there? So you made the assumption that

1 that was associated with hurricane damage?

2 A. Right. Because their claim amount was a range, I
3 included the high end of the amount for their claim, the
4 7,000, but I allowed 5,000 for the repair of the damage.

5 Q. And did you later -- after you came up with this
6 number of 1.8 million, did you later find out through a
7 document that that crack in the jail was there before
8 Hurricane Laura?

9 A. Correct.

10 Q. And you found that out when you looked at that
11 report that we've all looked at before that we've seen in
12 court which is the 2018 inspection report, right?

13 A. That's correct.

14 Q. You didn't have this when you did your May 2021
15 analysis, right?

16 A. I did not.

17 Q. And I believe Mr. Major testified he didn't have it
18 either, right?

19 A. Correct.

20 Q. And he's included it in the claim here on this --
21 in his claim that he gave you on May 6, right?

22 A. Yes.

23 Q. But if we look at that report, again, that's the
24 2018 report, and if you look at this item, I believe it's 12,
25 holding cells, the block wall has a large crack, recommend

1 evaluating and repairing, see that?

2 A. Yes.

3 Q. So when you got this report, the second time you
4 reviewed this claim and I gave you more documents, this
5 document was in it. You read through it and caught that and
6 you took it out of your claim, right?

7 A. Correct.

8 Q. So that's right part of the process. It's part of
9 what you're doing. You gather documents. You get as much
10 data and information as you can. You look at what's
11 hurricane related so you can determine the scope. Right?

12 A. Correct.

13 Q. Then you apply the cost?

14 A. Correct, for hurricane related damage.

15 Q. That's why there are going to be changes in your
16 number from the May 2021 to the August 2021 analysis that you
17 did. If I give you more data and you learn something new,
18 you're going to either add or subtract, right?

19 A. The more information we get, the better analysis we
20 can do.

21 Q. Is knowing about pre-existing conditions in your
22 business that you do, is that something that you would
23 typically ask for and want to know?

24 A. Yes.

25 Q. And why?

1 A. Could be several reasons. One is if you are --
2 similar to this, you want to know if there's pre-existing
3 damage that wasn't related to the hurricane that you can
4 account for that in your estimate. But two, for a -- usually
5 for depreciation values, to understand when things were
6 replaced, what maintenance work was done, so you can properly
7 depreciate materials.

8 Q. Okay. We're going to talk about depreciation a
9 little bit later because your number -- you didn't do an
10 actual cash value, right?

11 A. I did not.

12 Q. And why? Why not?

13 A. I was just looking at the replacement cost value.

14 Q. And why is that?

15 A. Because that was the cost that was done at the
16 time.

17 Q. Right. So you don't need to do an estimate. You
18 don't need to get actual cash value because by the time you
19 came in the work -- as the owner had told you and, in fact,
20 was true, the work was almost done, right?

21 A. Correct.

22 Q. So that's why you did a replacement cost value
23 analysis only?

24 A. Correct.

25 Q. Again, in your world and your industry where you're

1 doing estimates for repairs, do you consider it something
2 that you would do to put in your analysis if there were
3 pre-existing? Do you make notes of that in your work?

4 A. Yeah, we try to make notes about everything to make
5 sure everybody can understand what is or isn't included in
6 our estimate.

7 Q. So do you put something called assumptions?

8 A. We call it clarifications and assumptions and it's
9 just a listing. Again, you know, estimates are numbers on a
10 page; but you want to understand what those numbers mean. If
11 I can give an example?

12 Q. Yeah.

13 A. Is that okay?

14 Q. Sure.

15 A. If I was estimating the cost of this room and I
16 didn't include the lights, if I didn't put a note, nobody
17 would know that. So we put a note saying excludes lights.

18 Q. Right. So if you see something, if you're told
19 something, if you know something from looking at maintenance
20 records that you've already done that work, this was
21 pre-existing or the owner told me it was, you make the note
22 of it so that the people who get the information know, okay,
23 that's been done already. I don't have to question that.
24 Right?

25 A. Right. It's just to clearly communicate what is

1 and isn't included in the estimate.

2 Q. Does that help the claim process along if you put
3 that kind of detail in your analysis?

4 A. Yes.

5 Q. And is it standard in the industry to see those
6 assumptions that are made?

7 A. Yes. If estimates are done properly, it is.

8 Q. Okay. So what I did -- what I'd like to show
9 you -- because this spreadsheet is a bit cumbersome, I would
10 like to put in just an abbreviated version of it.

11 MS. WOLF: So since counsel has no objection, I'd
12 like to move to admit Exhibit D-174.

13 THE COURT: No objection?

14 MS. BROWN: No objection.

15 THE COURT: It'll be admitted.

16 BY MS. WOLF:

17 Q. So what I want to have you do to confirm,
18 Mr. Stuck, is -- we just looked at your spreadsheet, and what
19 this document is is an abbreviated version of it that has the
20 repair work. And we've seen a similar document like this in
21 court already. It's the breakdown of the work and on the
22 right-hand side is your analysis that adds up to that
23 \$1.8 million, right?

24 A. Correct.

25 Q. And you agree that that's a fair and accurate

1 representation of the May 13, 2021 spreadsheet that's been
2 admitted as D-34?

3 A. Correct.

4 Q. Now we have to, I guess, note a couple of things.
5 So, first of all, this is your May 2021 analysis that you
6 did. And obviously some of the numbers have been changed
7 this week so they're not going to be exactly up to date or
8 accurate. I think you were in court and heard that the Crest
9 Roofing is actually \$2,000 less now. Right?

10 A. I think there was \$2,000 for another building that
11 was inadvertently included here.

12 Q. Right. So this was prepared before then --

13 A. Correct.

14 Q. -- I mean before, I think, at least today or
15 yesterday. So the numbers haven't changed, but you see that
16 a lot of the numbers are similar to the numbers that --
17 there's no dispute between Eaux Holdings and Scottsdale over
18 the numbers. You'd accepted the Crest Roofing, right, at 53;
19 but now we know it's 2,000 less, right?

20 A. Correct.

21 Q. I believe there was no dispute over the Capstone
22 Environmental, right? That number was okay?

23 A. That's correct.

24 Q. The Jacques Electric, that number was fine, no
25 dispute there?

1 A. Correct.

2 Q. The Martin Insulation, the 10,000, that was fine,
3 accepted?

4 A. Yes.

5 Q. Industrial Refrigeration, \$1280, that one was okay?

6 A. Correct.

7 Q. Now, the All Clear, I think we've talked about that
8 enough. You did an independent assessment, your company did,
9 of the mitigation?

10 A. We did. So at the time, in May of 2021, the claim
11 was still the 491,000 All Clear invoice. Had a lot of
12 detailed backup. So we did our own analysis of it and came
13 up with a different value.

14 Q. Okay. And the value you came up with was \$330,639,
15 right?

16 A. Yeah. There's a small detail in there of a
17 duplication of the RJW Disposal.

18 Q. Why don't we go ahead and deal with that now
19 because I know this is a lot of numbers that keep moving.
20 But there was actually \$18,600 in there that was duplicated
21 for debris approval, right?

22 A. Correct.

23 Q. So when you made your recommendation or
24 determination that \$330,639 was okay you didn't realize at
25 the time there was 18,600 already in there for debris

1 removal?

2 A. That's correct.

3 Q. So when the jury sees your number change the next
4 time, you didn't make a mistake other than the fact that you
5 didn't find or didn't know that there was that duplication,
6 right?

7 A. That's correct.

8 Q. So that number's going to go down a little bit.
9 And then at the time -- tell us about Poole Roofing. It said
10 \$130,794 and says estimate. First of all, why is that an
11 estimate?

12 A. So at the time we didn't have any of the actual
13 payments made to Poole, the costs. So we had a Poole
14 estimate for the repair work, and it seemed high to us. So
15 we did our own independent estimate. My analysis included my
16 independent estimate of the roofing.

17 Q. So that's a J.S. Held independent analysis of the
18 roofing and thought it should cost \$130,794, right?

19 A. Correct.

20 Q. But it didn't. You saw later that the actual cost
21 was \$240,000. So we'll see in your August you go ahead and
22 change it to the 240,000, right?

23 A. That's correct.

24 Q. You want to explain? You still thought it was
25 exorbitant but -- how do you make that decision of, "Well, I

1 came up with 130 but they're telling me the actual cost was
2 240"?

3 A. Well, I mean, cost is cost whether it's higher or
4 lower than what we thought, right. So if we have data that
5 shows that's how much they paid for the work and we've seen
6 the work, which I saw the roof out there, then that's what we
7 decided the cost was.

8 Q. And then we see here the cracked wall, \$5,000,
9 which you included because you saw it in the Skyline numbers;
10 but then we're going to see that you took it out in August.
11 And then we got to talk about the Encore building repairs
12 because you didn't put \$1.36 million in that column, did you?

13 A. No, I did not.

14 Q. And we got to talk about the window. I think we
15 may have discussed the window, but we probably should do that
16 one first. So you included windows in your May assessment
17 because you agree. You determined that yes, the ribbon
18 window system all needs to come out to put the owner back
19 where they were pre-storm, right?

20 A. Correct. Just to be clear, that's replacement of
21 the windows, not repair.

22 Q. Replacement. But what was actually done -- and
23 again, you saw Encore's records and you heard Encore's
24 deposition. I want to make sure that nobody thinks they had
25 cracked windows out there. All of the cracked glass, chipped

1 glass, all of that Encore replaced, right?

2 A. That's correct.

3 Q. And you heard them say that they actually fixed the
4 mullions, the center pieces that were scratched and damaged.
5 They did that, right?

6 A. Correct.

7 Q. And then they did resealing and reglazing of all
8 the glass, right?

9 A. Yes.

10 Q. So that's all been paid for, but the owner was
11 still saying that they might -- he might do the window
12 replacement?

13 A. Correct.

14 Q. When you were out there they were still saying, "We
15 might do a window replacement," right?

16 A. That's correct.

17 Q. Is that why you included it, because you heard him
18 say, "We're going to do it"?

19 A. No. When he said, "We're going to do it," that's
20 when I realized that's potential claim scope. So I had to
21 analyze and decide if I thought -- if I agreed with that
22 scope or not. Once I went out there and looked, for the
23 reasons I mentioned earlier, I did decide they should replace
24 them.

25 Q. Okay. And you knew that this policy, this

1 insurance policy, was a replacement cost policy, right?

2 A. I'd been told that, yes.

3 Q. Which means that the owner gets that full amount,
4 the full depreciation once the work is done. But if the
5 work's not done, they don't get that last part, right? They
6 don't get the depreciation?

7 A. That's my understanding.

8 Q. They don't get full replacement cost?

9 But here were you thinking, because you're at the end of
10 the work and they say they're going to do it, "I'm just going
11 to include it as a total replacement cost in my numbers"?

12 A. Correct.

13 Q. All right. But you understand that if the owner
14 doesn't do the work they don't get the replacement cost of
15 the windows?

16 A. Yes.

17 Q. All right. Now we have to talk about the Encore
18 building repairs. That's where you'd shown us on your
19 spreadsheet that you broke out -- where Skyline put
20 1.36 million, Encore contract, you actually started breaking
21 it out into what are the standard components of building
22 contracts, right?

23 A. Correct, by trade.

24 Q. By trade. So rather than me say it and you say
25 yes, why don't you tell the jury. So what does that mean

1 when you break them up into the different categories?

2 A. When you take a contract like Encore's 1.36 million
3 that includes everything, again, I'll use this room as an
4 example, it includes the lights, the ceiling, the wall
5 panels, the woodwork, the carpet. All those pieces are all
6 in that number. But to really analyze -- you know, for us to
7 analyze the damage later to the carpet versus the wood versus
8 the ceiling we need to break that out and understand what
9 those costs are. So we used the data we got from them to
10 break that into those different trade pieces so that we can
11 look at it and say, okay, they're saying the carpet is worth
12 X, and we agree or disagree with that, they say the ceiling
13 is worth X, we agree or disagree. When it's just one big
14 lump sum number you can't -- I won't say you can't do it.
15 It's very, very difficult. It's not a proper way to do it.

16 Q. So if you could briefly maybe tell us why -- now,
17 again, I'm going to say 1.36 million; but we both --
18 Scottsdale and the plaintiffs agree that there was the
19 \$42,044 worth of change orders that the owner was not
20 counting in their claim so I don't want to confuse anything.
21 I might just say 1.36 million just for expediency; but both
22 sides agree that there was some amount that was deducted out,
23 about 42,000. Right?

24 A. That's correct.

25 Q. So the rest of it, you got a number that's a little

1 over a million or 1.1 million. So why don't you explain it.
2 Do you recall what you took out, what you didn't agree with?

3 A. Yeah, there were some other elements when we did
4 our analysis. For example, they had -- their contract
5 included a \$50,000 what they call contingency. Contingency's
6 just what contingency means. It's kind of a what-if fund.
7 It's not specific to any scope. It's also not cost. You
8 don't -- it's not a cost. You're not going to go buy a
9 contingency. So we took that out because it didn't seem like
10 a cost element to us.

11 I had a disagreement on the amount of general conditions
12 and general requirements that they had in relation to the
13 repair work. So I adjusted that to a number I thought was
14 more relevant.

15 Q. That's the 30 percent you're talking about, right?

16 A. Yeah. I think they were at 46 or 48 percent, and I
17 thought 30 percent was more relevant.

18 Q. So is that one of the things you do, is look at
19 numbers that are just way out of whack or not reasonable and
20 put them more at a reasonable amount?

21 A. Yes.

22 Q. Anything else big that we need to talk about?

23 A. There was some pre-existing condition work that
24 we'd known before we had that report that we made some
25 adjustments for.

1 Q. All right. So with all of that, that's how you
2 came up with your \$1.8 million number. And again, that's the
3 number that Scottsdale paid from. Right?

4 A. Correct.

5 Q. So now I want to move to your August assessment. I
6 just want to make sure that I get this for the jury. So that
7 number that you came up with in May, that was your
8 determination that that was the sum total of all the costs
9 that it would take to put Eaux Holdings back where they were
10 before the storm and under the insurance policy, right?

11 A. Correct.

12 Q. So let's move on to the August review. Again, the
13 case didn't resolve. There was still a dispute between the
14 parties. So you were asked to do it again, right?

15 A. I was.

16 Q. But that -- the next time, that's when you got
17 to -- oh. I'm sorry. That's when you got to -- we got the
18 Encore documents through subpoena. We got more Skyline
19 documents that we gave you. And you attended Encore's
20 deposition. Right?

21 A. Correct.

22 MS. WOLF: So this is what I'd like to offer, file
23 and introduce as Exhibit D-106 and this is Attachment 12
24 to his report. That would be the August one.

25 MS. BROWN: No objection.

1 THE COURT: It'll be admitted.

2 BY MS. WOLF:

3 Q. All right. So this is your work-product, right?

4 A. It is.

5 Q. This is the analysis that you did in -- I'll zoom
6 in when we get to a part that you have to look at. So this
7 is the analysis that you did in August 2021 timeframe?

8 A. Correct.

9 Q. And the number here, let's look where the tally is.
10 I see \$1,620,108 -- I'm sorry, \$1,620,118, right?

11 A. Can't see what you're doing.

12 Q. I'll just lower it. We're going to move to a chart
13 in just a minute. I just want to make sure we see that's
14 where this came from. That's the number there, right?

15 A. That's the bottom number, yes.

16 Q. And it's the same thing, the Skyline as claimed --
17 Skyline as claimed section and then you have the J.S. Held as
18 reviewed section, right?

19 A. Yeah. I can't remember what the total on the
20 Skyline as claimed was at this point.

21 Q. Let's see.

22 A. Still the same.

23 Q. So still 2.4 million. So we see Skyline's claim
24 value here and we see your assessment over here, right?

25 A. Correct.

1 Q. So this side is Skyline, this side is yours, right?

2 A. Yes.

3 Q. And you put notes in here that reflect what you
4 didn't agree with and why you made the changes, correct?

5 A. Well, yeah. We also put notes in there about this
6 is -- at this point we have job cost data so we have real
7 cost data --

8 Q. Okay.

9 A. -- so I include notes in there also about what cost
10 items from Encore's job cost report are included in each line
11 item.

12 Q. So that's what I want to move to. So we can get
13 away from this tiny spreadsheet.

14 A. Thank you.

15 Q. Yes. I want to get to the same thing that --

16 MS. WOLF: (Hands document to counsel.)

17 MS. BROWN: No objection.

18 MS. WOLF: I'm going to mark this one as D-175.

19 THE COURT: You're offering it?

20 MS. WOLF: Offer, file and introduce D -- I'm
21 sorry.

22 THE COURT: That's fine. It'll be admitted, I
23 heard her, without objection.

24 BY MS. WOLF:

25 Q. All right. Mr. Stuck, you agree that what we have

1 up here that we just introduced as D-175 is -- comes from
2 that D-106 that we just looked at, your August 2021
3 work-product; and again, it's the breakdown of the repair
4 work and what you determined to be the actual cost, right?

5 A. I do.

6 Q. And this comes from your analysis and this is your
7 number?

8 A. That's correct.

9 Q. And that's where we get the \$1.6 million?

10 A. Correct.

11 Q. I want to make sure that we address whatever's
12 changed. So the temporary roofing is still the same. The
13 Capstone Environmental is still the same. The electrical's
14 still the same. The Martin Insulation is still the same.
15 Mechanical work. Now, that's that All Clear number that
16 dropped; but you've already explained why?

17 A. Correct.

18 Q. You found a duplication?

19 A. Yes.

20 Q. So you adjusted for it and took out the double
21 charging of debris removal?

22 A. Right. It was \$18,600.

23 Q. And Poole Roofing, by this time you got the checks?

24 A. Correct.

25 Q. Checks and invoices, those are things that prompt

1 you to think, okay, this is an actual cost?

2 A. Correct.

3 Q. We haven't really talked about that; but you see
4 things in construction called proposals, estimates, quotes,
5 budgets. You see that all the time, right?

6 A. Yes.

7 Q. How do those compare to something that says invoice
8 or here's a check? How do those compare?

9 A. They only relate to before the work is done. Once
10 the work is performed, then it's costs. So we're always
11 looking for checks in this case, actual cost data, to show,
12 okay, they estimated, proposed, whatever they did, but now
13 here's what it cost.

14 Q. Right. So somebody might submit an estimate, could
15 be high, right?

16 A. Or low, yeah.

17 Q. And somebody could submit a quote; but until it
18 actually becomes an invoice or a check, that's how you know
19 what's actually been paid, right?

20 A. Correct.

21 Q. And sometimes you get things that say budget. What
22 is -- in your world, if somebody says here's a budget for
23 something, "I think it could cost this," do you treat that
24 and say, "Okay, I'll accept that number"? What do you do
25 with that, when somebody says here's a budget?

1 A. If the work has been done, I don't accept it
2 because it should be cost. If the work has not been done,
3 I'll go do my due diligence to try to validate that number.
4 If they've given me quantities and unit prices to validate
5 it, I will. But if not, I have to go develop those and see
6 if the number's right or wrong.

7 Q. So this is still back to the concept of a number on
8 a page is just a number on a page. You need to have backup
9 and supporting documentation to show the reasonable actual
10 cost for this work, right?

11 A. Correct.

12 Q. So here what changed -- another number that changed
13 is the Encore building repairs. So instead of 1.36 million
14 you have \$976,136. So can you explain how you determined
15 that number. Because it's different from your May analysis,
16 right? It dropped.

17 A. That's correct.

18 Q. So why don't you explain how you got that number of
19 \$976,136.

20 A. So at this time we had the job cost reports that
21 showed the cost they'd spent, that Encore had spent. So we
22 used that as a cost basis. I distributed it to the different
23 line items like I talked about and then I added on that
24 30 percent overhead, profit, general conditions cost that
25 wouldn't show up in a cost report. I added that on top. And

1 then, similar to before, there are the deducts of
2 non-hurricane damage items that were taken out of the value.

3 MS. WOLF: So what I have is what we've marked as
4 Exhibit D-155. That's what he's just referring to.

5 MS. BROWN: No objection.

6 THE COURT: It'll be admitted.

7 BY MS. WOLF:

8 Q. So I think I've talked about this maybe more than
9 people wanted to hear, but this is called a job cost by job
10 and vendor summary. I refer to it as job cost detail report.
11 What do you call it?

12 A. I call it detailed job cost report.

13 Q. Okay. And this is the thing we told you -- we told
14 about where -- you told about where the contractor tracks
15 every penny that's spent on a job, right?

16 A. Correct.

17 Q. And so when we subpoenaed Encore's documents you
18 saw this document which is a standard construction industry
19 document. And when you saw that you knew that this meant,
20 oh, I see what the job cost, right?

21 A. Yes.

22 Q. And then what did you do with this number? Tell us
23 how you got to your \$976,000 number.

24 A. So I distributed each of those amongst their
25 specific trade, you know, the acoustical specialty -- if you

1 look at the third one, Associated Waterproofing is the
2 company that did the exterior panels that we talked about. I
3 also looked for the -- tried to understand what-all is
4 included in some of the non-defined items like the paychecks
5 line item. You see the line item for paychecks for 45,000?
6 I think in Mr. Monheiser's testimony he said that's their
7 payroll system where they pay their employees. So we
8 understood that those costs were in there as well.

9 Q. Let me stop you for just a minute and point out a
10 couple things. I see Associated Waterproofing for \$299,900.
11 Is that the exterior wall cladding?

12 A. Yes.

13 Q. And so that's that number you talked about earlier
14 when I asked you how did -- you agreed with Skyline's scope
15 that all the wall cladding needed to be replaced, but you did
16 not agree with their price?

17 A. That's correct.

18 Q. Their price was \$430,000, right?

19 A. Correct.

20 Q. And the actual cost was \$300,000, correct?

21 A. Correct. So we used this as a basis for our
22 analysis since that's the cost.

23 Q. Right.

24 A. Added the non-cost items onto it like general
25 conditions, overhead, profit, and came up with our value.

1 Q. And this is in June 18, 2021, is when this shows
2 that it was run?

3 A. That's correct.

4 Q. We know that the job was finished sometime around
5 April 2021. Seems like everybody's testified to that.
6 Right?

7 A. Substantially complete, yes.

8 Q. Substantially complete. Okay. In reviewing
9 Encore's documents and sitting through their depo you heard
10 and saw that Encore -- Mr. Monheiser for Encore said the only
11 work remaining was the window system and some second floor
12 tinted finish work, if they were going to do it? You heard
13 that --

14 A. Yes.

15 Q. -- and saw that?

16 So the window system we've talked about already. That
17 was something the owner wanted to do even though the windows
18 were repaired. And more than that, wasn't just broken glass,
19 but the owner had said that he wanted to replace the window
20 system. Right?

21 A. Correct.

22 Q. And you actually saw the document. There was a
23 document that we talked about. The engineer, BECI, who did a
24 proposal, was hired by Encore to handle the windows and the
25 wall cladding, right?

1 A. The design of those, yes.

2 Q. So it wasn't just a simple thing. They actually
3 hired an engineer to go out and study this and do a proposal,
4 right?

5 A. Yes.

6 Q. You saw the proposal?

7 MS. WOLF: This is D-117. I don't know if this has
8 been admitted yet. I don't think it has.

9 MS. BROWN: No objection.

10 BY MS. WOLF:

11 Q. So I just want to show you this as a reminder. So
12 that was the -- you remember seeing this, that BECI was
13 hired? This was actually before Encore could start work
14 because they weren't licensed then yet. Right?

15 A. Yes.

16 Q. So BECI actually provided this proposal to Encore.
17 And we see that under the scope, the proposed services, it
18 included removal and replacement of the exterior cladding,
19 removal and replacement of damaged windows, removal and
20 replacement of the sealant at the windows. So this is
21 showing us that that proposal at this time wasn't to do the
22 whole window system, it was to fix everything that was
23 broken?

24 A. That's correct.

25 Q. All right. So it's your understanding that all

1 that work was done, right?

2 A. Yes.

3 Q. I'm going to look at -- well, you came up with that
4 number of \$976,000 for the Encore work. Didn't accept the
5 \$1.36 million contract. Right?

6 A. Correct.

7 Q. And the 976,000, that doesn't have that \$42,000 in
8 non-hurricane related stuff in it, right?

9 A. Correct.

10 Q. So after all of your analysis two times, one in May
11 and one in August of 2021, and getting all those records and
12 looking at everything, you determined that the actual cost of
13 that work and the actual cost to the owner was \$976,000,
14 right?

15 A. Correct.

16 Q. Because Encore didn't finish all the work in that
17 contract. They just didn't do it, right? They didn't do the
18 second floor tenant space?

19 A. Right.

20 Q. And the second floor tenant space, just to be
21 clear, if Encore was going to do that, that was not hurricane
22 related. That's if they got a tenant, a tenant was going to
23 come in and maybe move the kitchen around or move some walls.
24 So that tenant finish-out for a new tenant wouldn't be
25 hurricane related, right?

1 A. That's correct.

2 Q. But you knew that Encore had some budget or
3 contingency in its contract to do that work should the owner
4 want to do it, right?

5 A. Yeah. I don't think we can tell the value of it,
6 but I think their scope had some of those items in it.

7 Q. Right. As a matter of fact, Encore couldn't say
8 the value of it either, right? You sat in their deposition.
9 When asked they didn't know.

10 A. That's correct.

11 Q. They said, "I haven't done my subtractions yet. I
12 don't know. And I don't know if the owner's going to do it."
13 Right?

14 A. Correct.

15 Q. So that wouldn't be related at all to a Scottsdale
16 claim because that's not hurricane related, right?

17 A. That's correct.

18 Q. So now I want to look at -- the Encore contract has
19 already been introduced as exhibit -- plaintiff's Exhibit 28.
20 I know it's plaintiff's 28. Well, it's also in as
21 Exhibit D-124. So you saw this Encore contract that's eight
22 pages?

23 A. I did.

24 Q. And this is the one where we see -- under
25 Section 3, contract sum, you see the \$1,360,000, right?

1 A. Yes.

2 Q. And we've seen the payments. And what I wanted to
3 do is I took just the section we're talking about and
4 excerpted.

5 MS. WOLF: So this is going to be D -- I'm going to
6 offer, file and introduce 176.

7 THE COURT: Oh, I'm sorry. Yes, it'll be admitted.

8 BY MS. WOLF:

9 Q. And so this is that section, but I got tired of
10 flipping the page to read it so I put it all on one page.
11 Right, Mr. Stuck?

12 A. Correct.

13 Q. That comes from the contract. So it's Section 3,
14 contract sum, and I've highlighted the pertinent parts that I
15 want to ask you about. Section 3.1, "Owner shall pay
16 contractor for performance of the work subject to additions
17 and deductions," right --

18 A. Yes.

19 Q. -- "the sum of \$1,360,000," right?

20 A. Correct.

21 Q. You say this is not a \$1.36 million contract; is
22 that right?

23 A. I believe the 1.36 is a budget --

24 Q. It's a budget.

25 A. -- based on additions and deductions.

1 Q. So looking at this contract, that's the way it
2 reads. It's a 1.36 million subject to deductions, if there
3 are any?

4 A. Yes.

5 Q. And then we tied that to and heard that Encore said
6 in deposition that "I haven't figured out what the deductions
7 are," right?

8 A. Correct.

9 Q. And so then we go to the "Owner shall pay an
10 initial payment of \$100,000 within seven days of contract,"
11 right?

12 A. Yes.

13 Q. And we've already seen, it's already been admitted
14 as D-142, that the initial payment of \$100,000 was made,
15 right?

16 A. Yes.

17 Q. And then the next part of the contract says that
18 after the initial payment, okay, then a progress payment is
19 due, \$250,000, 30 days after the initial payment. You see
20 that?

21 A. I do.

22 Q. And we already know that that payment was made,
23 right?

24 A. Yes.

25 Q. That's already been admitted. All right. And then

1 the next one -- it only calls for three payments, right --

2 A. Yes.

3 Q. -- an initial, a progress, and a final?

4 That's what this contract says, right?

5 A. Yes.

6 Q. So the final payment shall be due within 30 days of
7 the last of the following to occur, and I highlighted -- now,
8 all of them have to occur. Final written approval. Don't
9 worry about that next part. That's a lien release
10 requirement. You have to have lien releases before you can
11 release all your money. Manufacturer warranties. But the
12 fourth one says, "Owner has received total payments for
13 depreciation held by the insurance company." You see that?

14 A. Yes.

15 Q. So that means that Eaux Holdings did not owe Encore
16 the final payment until Scottsdale released the depreciation,
17 right?

18 A. Correct.

19 Q. That's what it says. We've already seen -- well,
20 let's look at this. Scottsdale paid -- this has already been
21 admitted as D-7, I believe. So this is -- I don't know if
22 you can see that, Mr. Stuck; but I think it's already been
23 established May 18, 2021, Scottsdale issues the check for
24 \$1.1 million, right?

25 A. Yes.

1 Q. That's on May 18th. And on June 3rd, 2021, just a
2 short while later, plaintiff pays Encore \$550,000, right?

3 A. Yes, the final payment.

4 Q. All right. And then, of course, don't forget, they
5 had that preliminary work, that check that's already been
6 offered from the owner to Encore that's for that \$24,000 for
7 work they did before they could start work, right?

8 A. Yeah, the preconstruction work.

9 Q. That's all that preliminary work they did with
10 hiring ADG. I don't know if that's been mentioned before.
11 But all that HVAC remodel work that they wanted to do, they
12 hired an engineer for that, ADG. All of that work, the BECI
13 work, the plans and specs and proposals for all of that prep
14 work happened before Encore became licensed. So they were
15 doing all that work then, right?

16 A. Yeah. I think some of it continued after they were
17 licensed.

18 Q. Right. And I think this is D-162 which has already
19 been admitted. So this is the plaintiff, Eaux Holdings'
20 payments to Encore with the dates and it totals 924,000 and
21 some. And I just want to see. This is a way to check how
22 close you were, right?

23 A. Yes.

24 Q. See if you got a good grade in your August
25 assessment. Let's see how good you did. So there it is.

1 That's the number you came up with when you got all their job
2 cost detail reports and all the documents that Encore gave us
3 in a subpoena, right?

4 A. Yes.

5 Q. That's how close you were, about \$50,000. That's
6 not too bad, huh?

7 A. Yeah. I was a little high.

8 Q. Yeah, you were generous. So I'm going to shift.
9 We've talked about your analysis twice of all the documents
10 that we got from Encore, from Skyline, from the plaintiff,
11 having to do with the rebuild of Eaux Holdings' property.
12 We've looked at all that. Now I want to shift a minute to
13 your work that you did in looking at Eaux Holdings' claimed
14 amount, and let me start with -- want to go back before your
15 May 2021 because, remember, May 6 you get from Skyline that
16 number 2.44 million as the claim.

17 A. Correct.

18 Q. You said, "What is the claim?" They gave you that
19 spreadsheet and it added up to 2.44 million, right?

20 A. Correct.

21 Q. Before that, probably, I guess, before you were
22 involved, there was a February 2021 requirement for what we
23 call initial discovery responses in this case.

24 MS. WOLF: And this is -- we've got it on our list
25 as D-160 which is initial -- plaintiff's initial

1 disclosures.

2 MS. BROWN: Judge, I think we have an objection to
3 this.

4 MR. COX: Yeah. We need to approach.

5 **BENCH CONFERENCE**

6 MS. BROWN: For the same reason I couldn't put in
7 documents that the lawyer from Scottsdale submitted, she
8 shouldn't be allowed to put in things that I submitted.

9 THE COURT: This is -- is this, like, an
10 entrepreneurial article or something?

11 MS. WOLF: It was what they said --

12 MS. BROWN: The CMO doesn't allow for this to be
13 admitted.

14 THE COURT: Yeah.

15 MS. BROWN: This is another pleading.

16 MS. WOLF: You had asked at the summary judgment
17 hearing to have each of us put down what is the claim,
18 and this is what it was. Where I'm going with this is
19 that the claim has been different numbers. It's not
20 what they've shown but different numbers. It started
21 out --

22 THE COURT: Here's the thing. I'm not letting you
23 put pleadings in. It's not evidence. This is
24 pleadings. The answer, yeah. The petition, yeah.
25 That's the answer of your client and the answer of the

1 petition. But this stuff with the CMO, that's all for
2 y'all to go to mediation to settle. Why don't you just
3 ask if he's seen different numbers. You don't need to
4 put the pleading in.

5 MS. WOLF: I mean, I'm thinking.

6 THE COURT: This is an exhibit, I guess you're
7 telling me, to a summary judgment motion filed?

8 MS. WOLF: No, no, no. It was -- we were trying to
9 get to what the claim was --

10 MS. BROWN: You asked for summary evidence from us.

11 MS. WOLF: -- and so they're going to be able to
12 present to the jury that the claim has been consistent.

13 THE COURT: I don't remember asking for this.

14 MS. WOLF: You did. It was one that we filed. And
15 you actually said to us, "I don't understand why both
16 sides can't just put down what your claim is and tell me
17 how far off you are." So we both put our claim number
18 down.

19 MS. BROWN: This wasn't submitted as part of the
20 claim. This was submitted to the Court --

21 THE COURT: To me because I was trying to --

22 MS. BROWN: -- for part of a summary judgment.

23 THE COURT: Yeah, you're going to need a different
24 format for that. That's for my purposes.

25 How much longer you got? Because we got about 20

1 minutes before 5:00. Trying to gauge here what I'm
2 going to do.

3 MS. WOLF: Could be finished in 20 minutes.

4 THE COURT: How much cross you got of this guy?
5 We're not going to keep them past 5:00.

6 MS. BROWN: If she's going to 5:00, doesn't matter;
7 but not much.

8 THE COURT: Some of these are people driving two
9 and a half hours.

10 MS. BROWN: I have just a handful of questions.

11 THE COURT: I'm going to call it after this.

12 MS. WOLF: I don't know how much longer.

13 THE COURT: You try to finish and I'll see where we
14 are.

15 **PROCEEDINGS CONTINUED**

16 THE COURT: I'm trying to gauge the timing here for
17 y'all.

18 BY MS. WOLF:

19 Q. All right. So what I wanted to ask you about,
20 Mr. Stuck, is we saw in court that -- you saw. You've been
21 here. So you've seen that plaintiff's claim is something
22 just a little bit higher than \$2 million, right?

23 A. Correct.

24 Q. And you would agree that back in May of '21, when
25 Skyline provided you with their claim data, that added up to

1 \$2.44 million, right?

2 A. Correct.

3 Q. So what you've seen in court this week is about
4 \$400,000 less than what they provided to you in May of 2021,
5 right?

6 A. Yes.

7 Q. Let's talk about the Skyline estimate itself. You
8 reviewed it, and I think we've already talked about one of
9 the things I asked you to do was review it to determine if
10 there was any scope or cost in there that were unreasonable.
11 You've already talked about the exterior cladding. We've
12 talked about the comparison of the actual cost versus what
13 was in the Skyline estimate. Right?

14 A. Correct. The term we used before was inflated.

15 Q. Right. So do you have any other examples from your
16 analysis -- because you did review the Xactimate estimate
17 that Skyline did, right?

18 A. Yes.

19 Q. And can you give any other example -- you found
20 that it was inflated; is that right?

21 A. Portions of it.

22 Q. Does that mean that if -- when Skyline gave that
23 estimate to Scottsdale, the insurance company, did you see
24 that there was a reasonable basis for the insurance company
25 to dispute that estimate?

1 A. Yes.

2 Q. And can you give the jury some other examples of
3 things that you saw in that estimate. We've -- it's already
4 been mentioned, the \$261,000 contingency. You've already
5 mentioned what a contingency is. It's something that you
6 would include in a claim.

7 A. Correct.

8 Q. And you've mentioned the 5 or \$7,000, I can't
9 remember how much it was, for the crack in the jail, right?

10 A. Correct.

11 Q. And mentioned the wall cladding?

12 A. Correct.

13 Q. Can you give any other examples of things that you
14 found in that Skyline estimate that would indicate that it
15 wasn't reasonable?

16 A. Another one that stuck out was the electrical scope
17 of repairs. The Skyline estimate had individual outlets and
18 switches but then had these very large lump sum numbers that
19 were just done on a square footage basis. He just said, hey,
20 there's 15,000 square feet in the building and it'll be X
21 dollars a square foot. So he had over, I think, 300,
22 \$330,000 in electrical work that in the Encore cost the
23 electrical work ended up costing about 110,000, I believe the
24 number was. I don't remember the exact numbers, but roughly
25 three times what it ended up costing.

1 Now, just to be clear, we don't expect estimates to be
2 perfect. You're not going to nail it, but it should be
3 within reason.

4 Q. So the Skyline estimate had over \$300,000 worth of
5 electrical work, but the electrical work actually got done
6 for the hundred thousand dollar range?

7 A. Yeah, I think just over a hundred thousand dollars.

8 Q. So just to show that, because I do want to show
9 that you tied this stuff to --

10 MS. WOLF: I'm sorry. This is D-155.

11 BY MS. WOLF:

12 Q. I see on here Jacques Bourgeois Electric for
13 89,000, right?

14 A. Correct.

15 Q. Is that the electrical scope?

16 A. There was that but then, if you remember, there was
17 one -- it was electrical work that was done outside of the
18 Encore contract. So I believe I added that to get to the
19 roughly hundred thousand.

20 Q. I understand. I just wanted to be able to show the
21 jury where you're getting some of these numbers from. So
22 when you looked at the Skyline estimate, could you tell from
23 looking at it clearly whether pre-Hurricane Laura damage was
24 or was not included in there? Was that something that you
25 could pick up that estimate and say, "Okay. I'm going to

1 review this estimate and, yes or no, it looks like
2 pre-existing stuff has been removed"?

3 A. That was not clear.

4 Q. And I think you've already testified that you
5 believe it's standard for that kind of information to be
6 included in an estimate --

7 A. Correct.

8 Q. -- for just this reason, so that there's -- it
9 moves the process along and you can tell that things are
10 being done kind of in a meticulous fashion so you can make
11 sure the claim is right and it can get paid promptly, right?

12 A. That's correct.

13 Q. And I believe I asked this, but let me just make
14 sure. After reviewing the Skyline estimate did you form an
15 opinion as to whether that Skyline estimate provided
16 Scottsdale with sufficient information to determine the claim
17 value?

18 A. I decided it did not.

19 Q. There would not be enough information in there to
20 know what the claim was?

21 A. Correct. It's not -- the scope's not defined.
22 There's just not enough detail to really know.

23 Q. And as you said, it's inflated, right?

24 A. Yes.

25 Q. Let's talk about -- go back to this idea that the

1 Skyline estimate did not include an actual cash value, which
2 was something that the insurance company needed in order
3 to -- because that's what the policy was going to pay at the
4 time. You understood that, right?

5 A. Yes.

6 Q. And you do this kind of work. So when you go in in
7 a hurricane or any kind of catastrophe and you're providing a
8 number to an insurance company and it's a replacement cost
9 policy, which means it pays actual cash value first, do you
10 provide the actual cash value?

11 A. We ask that question of our clients, if they need
12 that actual cash value based on the policy. If they say yes,
13 then we calculate it. If they don't for some reason, if it's
14 not required by the policy, then we don't. But we ask the
15 question to know. In this case, if we asked the question,
16 they would have said yes.

17 Q. Right. And so if it's required that means they
18 need that information in order to determine what the value of
19 that claim is so they can pay it at that time, right?

20 A. Correct.

21 Q. And that's standard in the industry, if it's -- if
22 it's that kind of policy and you need the actual cash value
23 to pay, it's standard in the industry to provide it, right?

24 A. Yes.

25 Q. You have heard in trial this week this idea of

1 "We'll just take the 22 percent," if that's what the number
2 was that Grecco -- in other words, 22 percent depreciation.
3 So you've got your replacement cost value which is going to
4 get you the higher number if you do the work, actual cash
5 value, meaning they've taken depreciation. I believe it was
6 said and assuming it's true that Grecco had a 22 percent
7 depreciation number. Can you just take that and apply it to
8 the Skyline estimate?

9 A. No.

10 Q. And can you explain that. Why not?

11 A. Well, depreciation -- I'm going to call it
12 depreciation. That's easier than actual cash value. It's
13 depreciation. There's two -- really two things that provide
14 depreciation information. One is the age of something. So
15 if you have a 2010 car, that's going to be depreciated more
16 than a 2019 car. Just time, right. But then it's what it
17 is. Again, I'll use the courtroom as example. Carpet is
18 going to wear out quicker than lights. So you're going to
19 replace this carpet in maybe ten years but the lights in 30
20 years because they last longer. So you need to know what
21 they call the useful life of something is. So my point is
22 you have to go through each individual element because things
23 are depreciated differently. So you have to look at carpet
24 and paint and woodwork and ceiling tile and light fixtures
25 and all those different things. So whatever number that

1 results in, 22 whatever, is a build-up of all those
2 individual pieces.

3 Q. So it's just an average. It's just a conglomerate
4 number, and you can't do it that way?

5 A. Right. We only get to that number once you've done
6 all the individual pieces.

7 Q. So why don't we go back, then, and see if we can
8 just explain. If Skyline had done the actual cash value,
9 Xactimate has that ability, correct?

10 A. Correct.

11 Q. And so can you explain maybe just briefly the
12 process. Is it room by room and then component by component?

13 A. It's component by component based on the age of
14 that component. For example, if they'd put new flooring in
15 two years ago on the first floor but ten years ago on the
16 second floor, you have to do those separately. They have a
17 different age so they're going to depreciate differently.
18 Material by material, I'll call it. That's probably easier.
19 You have to do it material by material. You have to know how
20 old it is and you have to have some basis for its useful
21 life, how long it can last.

22 Q. So that's some work that has to get done because
23 it's room by room, right?

24 A. Yes.

25 Q. And then in a room it's every single thing that's

1 attached to that room; and so you have to find out how old it
2 is, right?

3 A. Correct. The items that are damaged by the
4 hurricane that are in the estimate, yes.

5 Q. So if it's ceiling, if it's electrical, whatever it
6 is, you have to know how old was it and then what was the
7 useful life and all of that gets input into Xactimate; then
8 once that's done, it gives you the actual cash value?

9 A. Correct.

10 Q. And that could -- Skyline can do that, right? They
11 could have done it?

12 A. I'm sure they can.

13 Q. Did you reach an opinion that -- about the Skyline
14 estimate, the fact that it didn't have actual cash value, and
15 I believe you said this earlier when we started off, did you
16 reach an opinion about whether or not that Skyline estimate
17 complied with industry standards when it didn't involve or
18 calculate an actual cash value?

19 A. I did. My opinion was I was surprised that it
20 didn't have the depreciation, ACV value in it. Normally we
21 would see ACV values in those estimates.

22 Q. Is it your opinion that that Skyline estimate
23 failed to meet industry standards?

24 A. Yes.

25 Q. Because it lacked the actual cash value?

1 A. Yes.

2 Q. Typically at the end of -- when construction's
3 complete you'll see some documents. I know you looked for
4 documents like that in the Encore records, right --

5 A. Yes.

6 Q. -- substantial completion?

7 One of the documents that was noted was an inspection
8 report by the fire marshal. This is something we got through
9 a Freedom of Information Act request, just something we
10 routinely do for stuff like this to get documents. You've
11 seen that fire marshal inspection report from the records.
12 It's called a fire marshal -- I can actually show it to you
13 if you want.

14 MS. WOLF: This is going to be D-96.

15 MS. BROWN: No objection.

16 BY MS. WOLF:

17 Q. I know it's going to be hard to read. The writing
18 on it's pretty light.

19 THE COURT: You offering that?

20 MS. WOLF: Yes.

21 THE COURT: You said no objection?

22 MS. BROWN: No objection.

23 THE COURT: Okay. It's admitted.

24 BY MS. WOLF:

25 Q. What we see up here is "Lake Charles Inspection

1 Report." This is for 620 Esplanade in Lake Charles, right?

2 A. Yes.

3 Q. And this is documents that you'll typically see
4 when you get construction records, any kind of close-out or
5 inspection records, right?

6 A. Yeah. Usually the fire department's the final one
7 because they want to make sure life safety systems are in
8 place.

9 Q. If you can read that very light writing, that's
10 May 24, 2021, right?

11 A. Correct.

12 Q. And that's very close to what almost, I think, all
13 the testimony lines up. You were there in April. It was
14 reaching substantial completion. So would it be fair to say
15 that on or about May 24, 2021 the work was completed --

16 A. Yes.

17 Q. -- based on this certificate and all the other
18 stuff that you've heard from Encore and from the owner and
19 from Skyline?

20 A. Yes.

21 Q. So I want to just summarize some of this
22 information. So you've already said that -- have you told us
23 the date that you actually provided your claim analysis, your
24 May claim analysis to Scottsdale?

25 A. I did. It was May 13th of 2021.

1 Q. So Mr. Stuck provided his claim analysis to
2 Scottsdale on May 13, 2021?

3 A. Correct.

4 Q. All right. And then we've seen -- you've seen that
5 check, the last check that came from Scottsdale to Eaux
6 Holdings that was on May 18. Do you remember that?

7 A. Yes.

8 Q. So Scottsdale paid Eaux Holdings on -- that was on
9 May 18, 2021, right?

10 A. Yes.

11 Q. And then we just saw from that document, the fire
12 marshal inspection, that the work reached completion on or
13 about that was May 24th, 2021?

14 A. Yes.

15 Q. All right.

16 A. You have to pull your sheet up.

17 Q. Okay. Thank you. So those dates are correct?

18 A. Yes.

19 MS. WOLF: Like to move to admit this as
20 Exhibit D-177.

21 THE COURT: Any objection?

22 MS. BROWN: No objection.

23 THE COURT: Be admitted.

24 BY MS. WOLF:

25 Q. So I want to just summarize some of the things that

1 you've told us. You determined a claim value -- this was the
2 second time, in August of 2021. You determined a claim value
3 of \$1.6 million, right?

4 A. That's correct.

5 Q. And Scottsdale to date has paid almost
6 \$1.8 million, right?

7 A. Correct.

8 Q. So it is your opinion that Scottsdale has paid more
9 than the claim value at this point, right?

10 A. That's correct.

11 Q. And given that depreciation is not due until the
12 work is complete and Scottsdale's payment came on May 18th
13 before the work was complete, you would agree that Scottsdale
14 actually paid before it was fully due under the policy,
15 right?

16 A. Yes.

17 MS. WOLF: I am going to tender the witness.

18 THE COURT: Ladies and gentlemen, we're going to
19 stop for today. I want you to hang tight two seconds.
20 I want to see Mr. Wolff and Mr. Cox very quickly because
21 I'm trying to get us a timeline.

22 (Off the record discussion.)

23 THE COURT: Getting the game plan, road map.
24 Originally -- good news. Originally I told you this
25 trial would take probably into Friday. Remember? I

1 have good news. We're going to finish this trial
2 tomorrow. So you'll get this case tomorrow for your
3 deliberations. I wanted to let you know that so you can
4 make plans. If you're in a hotel, you might want to
5 check out tomorrow when you leave. So that's what I was
6 trying to get from them because I want y'all to have a
7 road map. You know, it's high school basketball season.
8 I don't know if any of your schools are in the top 20.
9 Go to some ball games or something. I wanted you to be
10 aware. So that will be the plan. 9:00 o'clock. I
11 think we will wrap this thing up, get it to you sometime
12 during -- I'm maybe anticipating by mid morning, right
13 around lunchtime you'll probably get the case for your
14 deliberations. I'm not rushing you, not rushing the
15 lawyers; but I just wanted you to be able to make the
16 necessary arrangements and kind of know. You deserve
17 that. Okay. So we'll be adjourned till 9:00 in the
18 morning.

19 (Jury exits courtroom.)

20 (Proceedings recessed for the day.)

21
22
23 * * * * *
24
25

CERTIFICATE

I hereby certify this 16th day of May, 2022 that the foregoing is, to the best of my ability and understanding, a true and correct transcript of the proceedings in the above-entitled matter.

Deidre D. Juranka
Deidre D. Juranka, CRR
Official Court Reporter

Deidre D. Juranka, CRR
United States Court Reporter
Western District of Louisiana